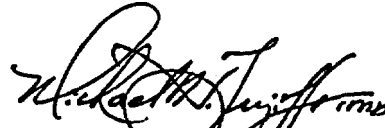


BACKGROUND

This issuance establishes Indian Health Manual (IHM), Part 5, Chapter 19, "Grants and Cooperative Agreement Management." This chapter sets forth the policy, objectives; and responsibilities relating to grants and cooperative agreements within the Indian Health Service.



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MATERIAL TRANSMITTED

IHM, Part 5, Chapter 19, "Grants and Cooperative Agreements Management."
Table of Contents.

MATERIAL SUPERSEDED

None.

MANUAL MAINTENANCE

Make a tab entitled Chapter-19, "Grants and Cooperative Agreement Management," and file this chapter in the IHM, Part 5 - Management Services. File the Table of Contents in the appropriate section of the IHM.

Record and file the transmittal notice number on the checklist in the Transmittal Notice Book.

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Management**

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ACRONYMS USED IN THIS CHAPTER

ACF	=	Administration for Children and Families
ARCPR	=	Agency for Health Care Policy and Research
ATSDR	=	Agency for Toxic Substance and Disease Registry
CDC	=	Centers for Disease Control and Prevention
CFR	=	Code of Federal Regulations
CGMO	=	Chief Grants Management Officer
CO	=	Contracting Officer
DAGO	=	Division of Acquisition and Grant Operations
DCGP	=	Division of Contracts and Grant Policy
DHHS	=	Department of Health and Human Services
DMP	=	Division of Management Policy
FDA	=	Food and Drug Administration
FR	=	Federal Register
FY	=	Fiscal Year
GAO	=	General Accounting office
GMB	=	Grants Management Branch
GMO	=	Grants Management Office
GMSRG	=	Grants Management System Review Guide
GPO	=	Government Printing Office
HCFA	=	Health Care Financial Administration
HRSA	=	Health Resources and Services Administration
IHCIA	=	Indian Health Care Improvement Act
IHM	=	Indian Health Manual
IHS	=	Indian Health Service
MOA	=	Memorandums of Agreement
NGA	=	Notice of Grant Award
NIH	=	National Institute of Health
OAM	=	Office of Administration and Management
OASH	=	Office of the Assistant Secretary for Health
OASMB	=	Office of the Assistant Secretary for Management
OMA	=	Office of Administration and Management
OMB	=	Office of Management and Budget
OPEL	=	Office of Planning, Evaluation and Legislation
ORC	=	Objective Review committee
OS	=	Office of the Secretary
PHS	=	Public Health Service
PHSA	=	Public Health Service Act
PMS	=	Payment Management System
SAMSHA	=	Substance Abuse and Mental Health Services Administration
TN	=	Transmittal Notices
USC	=	United States code
VA	=	Department of Veterans Affairs

5-19.1 INTRODUCTION

- A. Purpose. This chapter of the Indian Health Manual (IHM) identifies, explains, and clarifies Indian Health Service (IHS) policies and procedures for grants and cooperative agreements, hereafter collectively referred to as grants. Where appropriate, these policies and procedures are discussed in detail in this chapter. In other instances, they are summarized and reference is made to other, more extensive policy source documents.

The IHS grant policies and procedures are based on specific Federal statutes and regulations, as well as Department of Health and Human Services (HHS), Public Health Service (PHS), and IHS policy directives. A more detailed discussion of the legal basis for IHS grants is included under Section 5.

The IHS grant programs discussed in this chapter are administered and managed by the Grants Management Branch within the IHS Division of Acquisition and Grants Operations (DAGO), located at the IHS Headquarters facility in Rockville, Maryland.

In some cases, however, the responsibility to administer and manage individual IHS grants may be delegated by the Director, IHS, to the respective IHS Area Office where the grant is carried out. Additionally, the Chief Grants Management Officer has oversight and training responsibilities.

- B. Background In general, IHS grants are financial assistance mechanisms that provide direct aid to "grantees" (as defined in the specific authorizing legislation) in order to carry out specified, approved activities. Depending upon the eligibility criteria for each IHS grant program, such "grantees" might include Indian tribal governments or organizations, educational institutions, non-profit institutions or organizations, or individuals in the case of scholarships.

The IHS uses the grant mechanism to make awards when the IHS awarding office determines that no substantial Federal programmatic involvement is

(5019.1B Continued)

anticipated with the recipient during the period of activity performance. The IHS uses the cooperative agreement mechanism in lieu of a grant when the IHS awarding office determines that substantial Federal programmatic involvement with the recipient is anticipated during the period of performance.

It is important to understand that a cooperative agreement is, essentially, a form of grant, in that all of the requirements and procedures that apply to a grant apply also to a cooperative agreement. The main difference between these two award instruments is the degree of Federal programmatic involvement, with the cooperative agreement-award involving much more substantive Federal program specific involvement than a grant award. A more extensive discussion of the basic similarities and differences between grants is provided in this chapter under Section 5 -- Grants -- General/Overview.

In fiscal year (FY) 1994, the IHS administered a total of 26 grant programs ranging from urban health project grants to 3 student professional development scholarship programs. The IHS in FY 1994 made over 1,200 'grant awards to recipients under these various programs, with about 60 percent of this total number generated by the scholarship program. Section 6 of this chapter contains a complete list of these grant and cooperative agreement programs.

Overall in **FY** 1994, the IHS outlayed approximately \$1.7 billion for all health activity purposes. Of this amount, approximately 55 percent (\$900 million to \$1 billion) was spent in the form of direct expenditures. Another 40 percent (\$650 million to \$750 million) was spent through contracts, while about 5 percent (approximately \$65 million) was outlayed in the form of grants.

While the proportion of IHS grant and cooperative agreement expenditures is relatively small, the special purpose activities for which these funds are

(5019.1B Continued)-

awarded retain a special significance within the overall IHS budget. Both grants and cooperative agreements are used to finance a broad range of both "cutting edge" and special purpose activities that are not as effectively targeted in any other way. Such activities include the development of tribal management systems, demonstration programs for adolescent health centers, and programs for child abuse prevention.

c. Excluded Agreements In addition to cooperative agreements, the IHS also has used four other kinds of agreement instruments. These other "agreement" instruments have included:

- (1) Collaborative agreements, which are written agreements between the IHS and a non-Federal organization (such as a college or university) in which the manner of cooperation between the two parties is described, but which do not result in the direct transfer of funds.
- (2) Inter-agency agreements, which are written agreements between the IHS and another, non-HHS Federal agency that may involve a direct transfer of funds.
- (3) Intra-agency agreements, which are written agreements between the IHS and another HHS agency that also may involve the transfer of funds.
- (4) Memorandums of agreement (MOAs), which are specialized agreement instruments between the IHS and one or more parties used for the provision of Indian sanitation facilities and related technical services, and which are funded in whole or in part by the IHS.

In recent years, the IHS has moved away from the use of MOAs and towards the increased use of negotiated or fixed-price contracts for the provisions of Indian sanitation facilities and services. The Grants Management Branch does not

(5:19.1C Continued)

administer any collaborative agreements, inter-agency agreements, intra-agency agreements, or MOAs. These types of agreements are administered by either the Division of Management Policy (DMP), Office of Administration and Management (OAM), or the Office of Environmental Health and Engineering.

Current information, policies, and procedure⁶ concerning the use of each of the above referenced agreement instruments is available from the IHS/DMP/OAM at (301) 443-8198. As a result, this IHS chapter does not include any further discussion of these four type⁶ of agreements.

- D. Tribal Self-Governance Compacts Excluded- Tribal Self-Governance Compacts are authorized under Title III of the Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended. such

Tribal Compacts are described in detail under the IHM, Part 5, Chapter 5 -- 'Acquisition Management,' Section 20, 'Tribal Self-Governance Compacts. This IHS chapter, therefore, does not include any further discussion of Tribal Self-Governance Compacts.

- E. Responsibili ty for Policy Application The IHS Associate Directors, the Chief Grants Management Officer within the DAGO, and designated functional program managers for grants and agreements at IHS Headquarters, and, where delegated, within the Area Offices are responsible for the uniform application and implementation of the MS and IHS grant and cooperative agreement policies described in this chapter.

In addition, the Chief Grant⁶ Management Officer at IHS Headquarters, Rockville, Maryland is responsible for providing oversight, training, technical assistance, and other assistance as may be required by Area Office personnel in administering grants .

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(5-19.1F)

F. Revisions, cancellations and Supplements The Director of the IHS, with the support and assistance of the Director, DAGO, and the Chief Grants Management Officer, has the authority to revise this chapter, in whole or in part, consistent with Federal statutes and regulations, and HHS and IHS policy directives.

f Except when provisions of this chapter explicitly indicate otherwise, the maintenance and updating of this IHM chapter are to conform to the policy and procedural requirements established under the IHM, Part 1, Chapter 1 -- "Indian Health Service Manual System."

Any change, update, revision, or cancellation of any policy or procedure formalized by this chapter issuance, or its supplement, must be made using a Transmittal Notice (TN), and follow IHS/OAM/DMP requirement for review, distribution, and control.

Interim supplements to this chapter, including various IHS "memorandum and circulars that originate at IHS Headquarters in Rockville, Maryland, may be issued and used to establish interim policies between chapter updates.

This chapter is to be revised as needed, but no less than every 2 years, to incorporate such interim policy revisions. All such revisions are to be in accordance with the requirements of the IHM, Part 1, chapter 1.

When appropriate, numbered memoranda and circulars are to be canceled using a supersession line. To cancel a number issuance, an Errata Notice is to be issued using the same format as the item being canceled.

G. Preparation and Clearance of Revisions The Director, DAGO, is responsible for maintaining this chapter in accordance with the IHS/OAM/DMP circular and memorandum system.

(5019,1H)

H. Distribution and Control The Director, DAGO, is responsible for the timely **issuance** of this, IHM chapter, including revisions and supplements.

A mailing list has been established by the IHS Directives and Delegations Control Officer to distribute this chapter, and any revisions or supplements, to all Headquarter and Area Office personnel involved in the administration and management of IHS grant and cooperative agreement programs.

I. Sequential Development of Chapter 19.

This chapter of the IHM consists of a table of contents, 11 substantive sections, a glossary of key terms and an index.- A list, of the acronyms used in this chapter also is included immediately after the 'Table of Contents.'

The first four sections of this chapter discuss various introductory concepts, policies, and procedure⁶ involved in the management of IHS grant and cooperative agreement programs. Together, these four sections provide an overview for the more detailed, Specific discussions in the remaining sections.

: These first four sections include: 'Section 1 -- Introduction,' 'Section 2 -- Authorities and Responsibilities,' 'Section 3 -- Status of Previous Policy Issuances,' and 'Section 4 -- Ethics and -Standards of Conduct.'

'Section 5 -- Grant⁶ -- General/Overview' provides a comprehensive overview of IHS policy on grants, including Public Law 93-638 grants.

"Section 6 -- Current IHS Grant Programs" provides a brief description of each of the IHS grant and cooperative agreement programs, including funding and recipient information for FY 1994.

(5-19.11 Continued)

"Section 7 -- Planning and Budgeting" *focuses on* the policy responsibilities associated with planning and budgeting for IHS grant programs from one fiscal year to the next.

'Section 8 -- Pre-Award and Award Processes" provide6 a policy overview of the management responsibilities associated with the selection and award of grant and cooperative agreement assistance.

'Section 9 -- Post-Award Administration" concern6 IHS policies and procedures after a grant award is made until final close-out.

'Section 10 -- Management Control Issues: Single Audit Act" discusses IHS use of this requirement to monitor the use of grant and cooperative agreement funds.

'Section 11 -- Management Control Issues: Management Control Review Methodology and the Federal Managers' Financial Integrity Act" focuses on the policy implications of these three special concern6 for the IHS grants and agreements process.

'Section 12 -- Glossary" contain6 a brief definition for selected key grant and cooperative agreement terms that appear in this chapter.

'Section 13 -- Index" provide6 a reference to topics discussed in Sections 1 through 11.

"Section 14 -- Appendix: Standard6 of Ethical Conduct for Employees of the Executive Branch" contains a complete copy of this Executive Branch publication.

5 - 1 9 . 2

- A. **Organization Framework** The IHS, one of the nine operating divisions, and the Office of Public Health and Science constitute the Public Health Service within the Department of Health and Human Services.

The other eight PHS operating components are: the Agency for Health Care Policy and Research (AHCPR); the Agency for Toxic Substances and Disease Registry (ATSDR); the Centers for Disease Control and Prevention (CDC); the Food and Drug Administration (FDA); the Health Resources and Services Administration (HRSA); the National Institutes of Health (NIH); the Substance Abuse and Mental Health Services Administration (SAMHSA), and the Office of the Assistant Secretary for Health (OASH).

- B. **IHS Grants Management Delegation** The delegation of authority for the administration and management of grants; and cooperative agreements within the IHS is in accordance with the following chain of command: (1) the Director, IHS; (2) the Director of Headquarters Operations, IHS; (3) the Associate Director, OAM; and (4) the Chief Grants Management Officer, IHS.

On May 4, 1994, the Associate Director, OAM, issued a directive delegating to the Chief Grants Management Officer, IHS, grant authority for programs authorized under the following legislation:

- (1) The Public Health Service (PHS) Act, Title III, as amended. The PHS Act general powers and duties that are delegated to the Chief

Grants Management Officer, IHS, may not be redelegated.

- (2) The Indian Health Care Improvement Act, Public Law 94-437, as amended.

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(5-19.28 Continued)

- (3) The Indian Self-Determination and Education Assistance Act, Public Law 93-638, as amended.

As the authorizing legislation for the IHS grant and cooperative agreement programs is revised and amended by the United States Congress, new legislative authorities for programs may be added and existing authorities may be deleted from this current list.

As a result of the May 4, 1994, directive:

- a. The Chief Grants Management Officer, IHS, is designated as the Grants Technical Manager responsible for (a) the review of requests for the delegation of Area grants authority, and (b) the oversight of satellite grants offices.
- b. The Chief Grants Management Officer, IHS, in carrying out his or her responsibilities is to adhere to the "roles and responsibilities" requirements specified in (a) the PHS Grants Administration Manual, Part 101, "Grants Management Officer Responsibilities," and (b) this chapter of the IHM.

In general, the authorities exercised under the May 4, 1994, directive are to be in accordance with the legislative, regulatory, policy, and procedural provisions, including such provisions under the HHS Grants Administration, and IHS supplements or instructions.

Currently, within the IHS, the Chief Grants Management Officer heads the Grants Management Branch, which functions as a line organization under the Division of Acquisitions and Grants Operations (DAGO).

- C. IHS Grants Program Delegation In addition to the IHS Grants Management Officer:, who are responsible

(5-19.26 Continued)

for the efficient business management of IHS grant programs, there is also a separate "chain of command" and responsibility for those IHS personnel who are responsible for programmatic expertise in the operation of IHS grant and cooperative agreement programs.

The Director, IHS, is the 'Responsible Official' for all IHS grant programs. In turn, he or she has delegated responsibility for the programmatic operation of each grant program to an appropriate Associate Director or Area Director, who is known as the "Designated Official."

The Designated Official for each grant program may chose to further delegate parts of this programmatic responsibility. If the Designated Official does elect to make such a delegation, the person to whom the responsibility is assigned is known as the 'Cognizant Program Official.'" However, the Designated Official shall not delegate approval of the Objective Review Committee (ORC) members, or the selection of approved applicants. He/she must retain authority for these functions.

The Cognizant Program Official is the program official with responsibility for: (1) day-to-day programmatic administration; (2) program grant planning; (3) preparation of the program announcement; (4) increasing the number of applications; (5) resource guidance to the ORC; and (6) postaward program monitoring and the evaluation of program effectiveness.

Manual Exhibit 5-19.2-A contains further discussion of the respective roles and responsibilities of IHS Program Officials and Grants Management Specialists.

D. Delegation to Area Directors.

(1) A-l-a-s-k-a - Effective November 1, 1993, the Acting Director of Headquarters Operations delegated to the Alaska Area

(5019.2D Continued)

Director the authorities to make grants within the Alaska Area.

Under this delegation, these authorities are to be exercised for the purpose of the reinvention laboratory at the Alaska Native Medical Center and for the implementation of an Area-wide grants program.

As @reinvention laboratory for the National Performance Review, the IHS Alaska Area is one of only two original, designated reinvention laboratories within the entire HHS.

For the purposes of this delegated grant authority, the Alaska Area Grants Office is designated as a satellite grants office of the IHS Grants Management Branch, DAGO, OAM. Under a separate delegation the Chief Grants Management Officer is designated as the Grants Technical Manager for oversight of satellite grants offices.

The November 1, 1993, delegation of grant-making authority is limited to specific Federal laws, and contains a number of additional, specific restrictions, all of which were detailed in the November 1, 1993, directive. A copy of this directive is included in this IHM chapter as Manual Exhibit 5-19.2-B.

- (2) Redelelegation within Areas. Where a delegation of authority has been made to an IHS Area Director, the Area Director may redelegate grant authority to a Grants Officer, or to an Extramural Awards Specialist, if the delegation is not otherwise restricted. At the present time, however, grant authority may not be redelegated to a Contracting Officer (CO).

(5-19.2D Continued)

As of April 17, 1995, the Alaska Area remained the only IHS Area to have received delegated grant-making authority from Headquarters, IHS.

- (3) **Applicability of Legislative Mandates and Regulatory Guidances.** Whenever an IHS Area receives delegated grant authority, that Area is responsible for acting in accordance with all IHS legislative mandates and regulatory guidance that are applicable to the Grants Management Branch at Headquarters, IHS. Such regulatory guidances currently include Federal regulations as published in the Code of Federal Regulations (CFR), Federal Register (FR), Office of Management and Budget (OMB) Circulars, Department of the Treasury Circulars, General Accounting Office (GAO) Audit Circulars, the HH and PHS Grants Administration Manuals, and the PHS Grants Policy Statement.

A more detailed list of these legislative mandates and regulatory guidances is provided under Section 3 of this chapter.

5-19.3 STATUS OF PREVIOUS POLICY ISSUANCES

A. Purpose This chapter of the IHM consolidates current policy information relating to the IHS management of grant programs. This chapter also provides a reference to the various current legislative mandates and regulatory guidances that concern the management of these grant and agreement programs.

B. Structure. This Section provides a status update for selected PHS and IHS policy sources. This current status update is provided under Manual Exhibit 5-19.3-A: "Summary of Selected PHS and IHS Policy Issuances Regarding Grants and Cooperative Agreements."

This Section also contains a reference list for all current legislative mandates -and regulatory guidances that affect the operation of the Grants Management Branch in its management of IHS grants and cooperative agreements. This list is contained under Manual Exhibit 5-19.3-B: "Summary Reference for Legislative Mandates and Regulatory Guidances that Concern IHS Grants and Cooperative Agreements."

More specifically, these legislative mandates include not only a summary reference to the authorizing legislation, but also reference to other overarching statutes -- such as the Administrative Procedures Act, the Anti-Deficiency Act, or the Pro-Children Act of 1994 -- that affect all IHS grant and cooperative agreement programs. Under the regulatory guidance section, references are included to various applicable HHS and other regulations as codified in the CFR; to OMB and U.S. Treasury circulars; to GAO audit guidelines, and to other HHS and PHS documents, such as the Grants Administration Manuals and PHS Grants Policy.

5-19.4 ETHICS AND STANDARDS OF CONDUCT

- A. OVERVIEW. As an Agency of the United States Government, the IHS is governed by the specific standards of conduct that are required under various Federal laws and regulations.

Many of these standards of conduct concern all IHS personnel, while others impose additional, special responsibilities on those individuals who hold positions or authorities involving special or sensitive areas of trust or responsibility. Thus, all IHS personnel share a number of "common" ethical responsibilities in the conduct of their Federal service. These common ethical responsibilities include those to the American people and taxpayers; to the American Indian and Alaska Native children and adults who are the beneficiaries of IHS services; to IHS grantees and others who deal with the IHS; and to other IHS personnel.

For all IHS personnel involved in grant and cooperative agreement activities, special, further ethical responsibilities are imposed. These further ethical responsibilities stem from the necessity to always conduct the business of the American people in a manner that is above reproach.

In effect, ethics within the IHS cover everything from specific standards of conduct imposed by statute and regulation to those imposed by custom and common sense.

- B. Standards of Conduct. Standards of conduct for employees of HHS are found in 45 CFR Part 73 and in the Personnel Pamphlet Series No. 7.

In addition, the August 1992 publication, Standards of Ethical Conduct for Employees of the Executive branch includes Executive Order 12674 (April 12, 1989) Principles of Ethical Conduct for Employees of the Executive Branch." This 1992

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(5-19.48 Continued)

publication was originally published in the Federal Register, for August 7, 1992 (pages 35006-35067), and also is currently codified in the CFR under 5 CFR Part 2635, as well as remaining available in booklet form through the U.S. Government Printing Office.

Because of the importance of proper ethical conduct on the part of all IHS personnel involved in grant-making, a summary of the major subdivisions of 5 CFR 2635 is provided under Subsection C, which follows. In addition, a copy of this complete regulation is also included in 5-19.14 Appendix.

These regulations are all designed to ensure that the business of the Federal Government is conducted effectively, objectively, and without improper influence or the appearance of improper influence. This principle holds true for relationships involving the Government and awardees under IHS and other Federal grant and cooperative agreement programs.

C. Standards of Ethical Conduct for Employees of the Executive Branch: Summary.

- (1) Overview. Early in 1989, the President's Commission on Federal Ethics Law Reform recommended that the present system of individual agency ethics regulations be replaced with a single regulation applicable to all employees of the Executive Branch.

Acting upon this recommendation, President Bush signed Executive Order 12674 on April 12, 1989. This Executive Order described 14 basic principles of ethical conduct for Executive Branch personnel and directed the Office of Government Ethics to establish a single clear and comprehensive set of Executive Branch standards for ethical conduct.

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(5-19.4C Continued)

On August 7, 1989, those standards were published in the ~~Federal Register~~. They became effective in early 1990, for the first time all employees of the Executive Branch came under a single set of standards governing ethical conduct.

- (2) Structure of the Regulation. As codified in 5 CFR Part 2365, the "Standards of Ethical Conduct for Employees of the Executive Branch" are structured and organized according to the following nine subparts.

GENERAL PROVISIONS - SUBPART A

Subpart A establishes the framework for the rest of the regulation. It includes definitions, provides authority for supplementation of the regulation when necessary by individual agencies, and encourages employees to seek advice from agency ethics officials. It also:

- Restates the fourteen principles of ethical conduct and instructs employees to apply them when considering situations not specifically addressed by the regulation; and
- For situations that involve appearance of conflicts, provides that the circumstance will be judged from the perspective of a reasonable person with knowledge of the relevant facts.

GIFTS FROM OUTSIDE SOURCES - SUBPART B

Subpart B prohibits employees from soliciting or accepting gifts from prohibited sources, or gifts given because of their official position. The term "prohibited source"

(5019.4C Continued)

includes: (1) anyone seeking business with or official action by, an employee's agency, And (2) anyone substantially affected by the performance of an employee's official duties. For example, a company bidding for an agency contract or a person seeking an agency grant would be a prohibited source of gifts to employees of that agency.

The term "gift" is defined to include nearly anything of monetary value. However, it does not include items that clearly are not gifts, such as publicly available discounts and commercial loans, and it does not include certain inconsequential items, such as coffee, donuts, greeting cards, and certificates.

There are several exceptions to the prohibitions against gifts from outside sources. For example, with some limitations, employees may accept:

- Unsolicited gifts with a market value of \$20 or less per occasion, aggregating no more than \$50 in a calendar year from any single source;
- Gifts, motivated by a family relationship or personal friendship;
- Free, attendance at certain widely-attended gatherings, such as conferences and receptions, when the cost of attendance is borne by the sponsor of the event; and
- Food, refreshments and entertainment at certain meetings or events while on duty in a foreign country.

(5-19.4 Continued)

The subpart also contains guidance on returning or paying for gifts that cannot be accepted.

GIFTS BETWEEN EMPLOYEES - SUBPART C

Subpart C prohibits employees from:

- Giving or soliciting for a gift to another employee who is an official superior, or
- Accepting a gift from a lower-paid employee, unless the two employees are personal friends who are not in a superior-subordinate relationship.

The following are among the exceptions to these prohibitions:

- On an occasional basis, employees may give and accept items aggregating \$10 or less per occasion, food and refreshments shared in the office, or personal hospitality at a residence. This exception can be used for birthdays and those holidays when gifts are traditionally exchanged.
- On infrequent occasions of personal significance, such as marriage, and on occasions that terminate the superior-subordinate relationship, such as retirement, employees may give and accept gifts appropriate to the occasion and they may make or solicit voluntary contributions of nominal amounts for group gifts.

(5019.4C Continued)

CONFLICTING FINANCIAL INTERESTS - SUBPART D

Subpart D contains two provisions designed to deal with financial interests that conflict with employees' official duties.

The first provision entitled "Disqualifying financial interests" prohibits an employee from participating in an official government capacity in a matter in which he or she has a financial interest, or in which his/her spouse, minor child, employer, or any one of several other -specified persons has a financial interest. For example, an agency purchasing agent could not place an agency order for computer software with a company owned by his wife. The provision includes alternatives to nonparticipation, which may involve selling or giving up the conflicting interest or obtaining a statutory waiver that will permit the employee to continue to perform specific officials duties.

The second provision, entitled 'Prohibited financial interests,' contains authority by which agencies may prohibit employees from acquiring or retaining certain financial interests.

Employees required by Subchapter D to sell financial interests may be eligible to defer the tax consequences of that divestiture.

IMPARTIALITY IN PERFORMING OFFICIAL DUTIES -
SUBPART E

There may be circumstances other than those covered by Subpart D in which employees should not perform official duties in order to avoid an appearance of loss of impartiality. Subpart E contains two disqualification provisions addressing those appearance issues.

(5019.4C Continued)

The first provision, entitled "Personal and business relationships," states that employees should obtain specific authorization before participating in certain government matters where their impartiality is likely to be questioned. The matters specifically covered by this standard include those:

- Involving specific matters, such as contracts, grants or investigations, 'that are likely to affect the financial interests' of members of employees' households; or
- In which persons with whom employees have specific relationships are involved. *T h i s* would include, for example, matters involving employers of spouses or minor ,children, or anyone with whom employees have or seek a business **or** financial relationship.

There are procedures by which employees may be authorized to participate in such matters when it serves the employing agency's interests. The process set forth in Subpart E should be used to address any matter in which an employees impartiality is likely to be questioned.

The second provision, entitled 'Extraordinary payments from former employers,' restricts employees' participation in certain matters involving former employers. If a former employer gave an employee an 'extraordinary payment' in excess of \$10,000 prior to entering Federal service, it bars the employee from participating for 2 years in matters in which that former employer is, or represents, a party. For example, a \$25,000

(5019.4C Continued)

payment voted on an ad hoc basis by a board of directors would be an "extraordinary payment." A routine severance payment made under an established employee benefit plan would not apply to this provision.

SEEKING OTHER EMPLOYMENT - SUBPART F

Subpart F prohibits employees from participating in their official capacities in particular matters that have a direct and predictable effect on the financial interests of persons with whom they are "seeking employment" or with whom they have an arrangement concerning future employment.

The term "seeking employment" encompasses actual employment negotiations as well as more preliminary efforts to obtain employment, such as sending an unsolicited resume. It does not include:

- ° Sending an Unsolicited resume, for example, to someone only affected by the employee's work on general rulemaking; or
- ° Requesting a job application or rejecting an unsolicited employment overture.

An employee generally continues to be "seeking employment" until he or the prospective employer rejects the possibility of employment and all discussions end. However, an employee is no longer "seeking employment" with the recipient of an unsolicited resume after 2 months have passed with no response.

(5019.4C Continued)

MISUSE OF POSITION - SUBPART G

Subpart G contains four provisions designed to ensure that employees do not misuse their official positions. These include:

A prohibition against employees using public office for their own private gain or for the private gain of friends, relatives, or persons with whom they are affiliated in a nongovernment capacity, **or** for the endorsement of any product, services or enterprise.

- A prohibition against engaging in financial transactions using nonpublic information, or allowing the improper use of nonpublic information to further private interests;
- An affirmative duty to protect and conserve Government property and to use Government property only for authorized purposes; and
- A prohibition against using official time other than in an honest effort to perform official duties, and, a prohibition against encouraging or requesting a subordinate to use official time to perform unauthorized activities.

OUTSIDE ACTIVITIES - SUBPART H

Subpart H contains provisions governing employees involvement in outside activities, including outside employment. These provisions are in addition to the provisions set forth in other subparts of the regulation. The provisions in Subpart H include:

(5019.4C Continued)

- Synopses of statutes and a constitutional provision that may limit certain outside activities;
- A prohibition against engaging in outside activities that conflict with employees' official duties;
- Authority by which individual agencies may require employees to obtain approval before engaging in outside activities;
- Authority by which individual agencies may require employees to obtain approval before engaging in outside activities;
- Limitation⁶ on outside earned income applicable to certain Presidential appointee⁶ and certain noncareer employees;
- A prohibition against serving as an expert witness, other than on behalf of the United States, in certain proceeding⁶ in which the United States is a party or has a direct and substantial interest:
- a A prohibition against receiving compensation for teaching, speaking or writing related to official duties, which is in addition to the honorarium prohibition imposed by statutes;
- Limitations on fundraising in a personal capacity; and
- A requirement that employees satisfy their just financial obligations.

Subpart H reserves the section which, in the proposed rule, had set forth standards for participation in the activities of professional associations.

(5019.4D)

- D. Conflict of Interest: Additional Focus Conflicts of interest fall under two broad categories. "actual" and "apparent." Actual conflicts of interest include the following:
- (1) Engaging in a private business or professional activity where there would be a conflict between official duties and one's private interests.
 - (2) Having a financial interest either directly or indirectly, where there would be a conflict between official duties and the financial interest. This includes the employee, the employee's spouse, the employee's children, any organization in which the employee serves as an officer, or an organization with which the employee may be negotiating or has an arrangement for prospective employment.
 - (3)** Using, or giving the appearance of using, "inside information" to further a private interest or the interest another person with whom one has family, business, or financial ties. "Inside information" is information available to the Government, but not available to the public.
 - (4) Using one's official position to get a financial benefit for oneself or another person. Exercise particular care if you have a family, business, or financial connection with potential contractors with your agency.
 - (5) Acting as an agent in a claim against the United States. This would include a claim before any Department, Court, or agency in which the United States is a party or has a direct and substantial interest. Public Law 93-638 permits former IHS employees to serve as an agent for an Indian tribe. The Secretary must be advised in these cases.

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Compared to actual conflicts of interest, apparent conflicts of interest are much more difficult to define or to prove. To the general public, however, apparent conflicts are often more visible and, therefore, more difficult to disprove to the layman. Since there is no clear definition, each employee should think about their actions, and how their actions might be viewed by the public, and should guard against doing anything that might appear to give one person, group, or business an advantage over another. Employees should also be especially careful if it might appear that the beneficiary is a friend or relative.

E. Gratuities.

The definition of what is a 'gratuity' has been subject to different interpretations over the years. There is no question that asking for or accepting money or presents would be considered gratuities. However, food, drink, and transportation present another set of problems. Currently, food, drink, and transportation are considered gratuities except in the following situations: -

- (1) Food and drink served at luncheons, dinners, and similar gatherings sponsored by an industrial, technical, or professional association are permitted if there are discussions of matters of mutual interest to Government and industry. The sponsor must be an association, not a grantee or a contractor.
- (2) Customary social exchanges between personal friends and relatives are permitted if the exchange is on a personal basis. However, care should be exercised if the personal friend is a grantee or a contractor with the agency, for that could give the appearance of a conflict of interest. This is an area where common sense must be used.

(5019.4E Continued)

- (3) Items available to the public at a trade show or exhibition.
- (4) Participation in a community activity where the relationship with the grantee or the contractor is remote, though the activity might be sponsored by that party.
- (5) Local transportation provided by the grantee or the contractor while on official business may be accepted when alternate arrangements are not practical. However, this should be restricted to working hours.

F. Lobbying. Section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101-21, added a new section 1342 to Title 31 U.S.C. entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions.

Section 1342 prohibits recipient⁶ of Federal contracts, grants, loans, or cooperative agreement⁶ from using appropriated funds for lobbying the executive or legislative branches of Government in connection with specific contract, grant, loan, or cooperative agreements. It requires persons requesting or receiving a Federal contract, grant, or cooperative agreement over \$100,000, or a loan over \$150,000, to disclose such lobbying with other than appropriated funds.

5-19.5 Grants and Cooperative Agreements - - **GENERAL/OVERVIEW**

- A. General. IHS policies and procedure⁶ that concern the award and management of IHS grants and cooperative agreements are governed by applicable Federal statutes, regulations, and circulars, and by applicable HHS, PHS, and IHS directives.

The authorization for the various grant and
6" cooperative agreement programs administered by the IHS is provided, in each instance, by specific authorizing legislation for the program. Examples of such authorizing legislation include the Public Health Service Act, the Indian Health Care Improvement Act, and the Indian Self-Determination and Education Assistance Act -- each of which contain specific sections that authorized IHS grant activity. PHS and IHS regulations, published in the Federal Register and codified in the Code of Federal Regulations, provide further guidance for IHS grant-making activities.

- B. **Guidance for the Use of Grants and Cooperative Agreements.**

Public Law 95-224, the Federal Grant and Cooperative Agreement Act of 1977 (as codified under Chapter 63 of Title 31 -- "Money and Finance," in the United States Code [U.S.C.]) provides a description of the difference between a contract, a grant, and a "cooperative agreement," as well as guidance for the appropriate use of each of these award instruments.

More specifically, section⁶ 6303, 6304, and 6305 under Title 31 of the U.S.C. provide the following direction concerning the respective use of procurement contracts, grant agreements, and cooperative agreements:

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(5019.5B Continued)

sec. 6303. Using procurement contracts.

An executive agency shall use a procurement contract as the legal instrument reflecting a relationship between the United States Government, and a State, a local government, or other recipient when

- (1) the principal purpose of the instrument is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; or
- (2) the agency decides in a specific instance that the use of a procurement contract is appropriate.

Sec. 6304. Using grant agreements.

An executive agency shall use a grant agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when-

- (1) the principal purpose of the relationship is to transfer a thing of value to the State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government; and
- (2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

(5-19.58 Continued)

Sec. 6305. Using Cooperative agreements.

An executive agency shall use a cooperative agreement as the legal instrument reflecting a relationship between the United States Government and a State, a local government, or other recipient when-

- (1) the principal purpose of the relationship is to transfer a **thing** of value to the State, local government, or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring (by purchase, lease, or barter) property **or services** for the direct benefit or use of the United States Government; and
- (2) substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.

In general, most Federal agencies, including the IHS, use the grant award instrument much more frequently than the cooperative **agreement** award" vehicle. This occurs because the "cooperative agreement" is essentially an alternative assistance instrument to be used in place of a grant whenever substantial Federal program involvement with the recipient is anticipated during the performance period. Thus, the key difference between grants and cooperative agreements, as Federal award instruments, is the degree of the Federal programmatic involvement, rather than the type of required administrative requirements.

As a rule throughout the HHS, grants policy also is applied to cooperative agreements.

(5-19.5 Continued)

C. **Grants Legislative** authorities.

In order to enact any Federal grant program or to award any single grant, the Agency must have specific legislative authority. Grant program legislation usually delineates (1) the grant as the award mechanism, (2) the purpose of the program, and (3) the types of organizations eligible to apply for the grant program. A grant shall not be awarded unless specific legislative authority exists.

Currently, within the IHS, the following four Acts provide the specific authority for the Agency to make grants:

- o The Self-Determination and Education Assistance Act (P.L. 930638), as amended.
- o The Indian Health Care Improvement Act (P.L. 940437), as amended.
- o Section 301, Public Health Service Act (P.L. 1010630), as amended.
- o Indian Child Protection and Family Violence Prevention Act (P.L. 780410), as amended.

D. **Grant Funding Availability**.

- (1) Full funding for the budget period of the grant must be available at the time the grant is issued initially, and must be from one annual appropriation. New and continuing grants may not be issued that include split funding. Split funding means partially funding a single grant from one annual appropriation with the intent of supplementing the award with the next fiscal year's appropriation for the remainder of the funding originally intended.

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(5019.5D Continued)

- (2) The Anti-Deficiency Act (31 USC 1341-1351) applies to grants. A grant award may not be issued unless monies are available from the current appropriation. A grant shall never be issued unless Congress has enacted an appropriation act authorizing the funds. The Anti Deficiency Act requires criminal penalties for its violation.

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J >5-19.6 CURRENT IHS GRANT PROGRAMS

- A. General. Each of the grant programs that are administered by the IHS are established under authorizing legislation enacted by the United States Congress. For any fiscal year, however, the amount of funding available to the IHS for award and allocation under each of these authorized programs is determined by appropriations legislation that is enacted by the Congress.

In accordance with IHS policy, most current IHS administered grant programs are discretionary and competitive project grant programs. The IHS administers no statutorily authorized formula grant program, although several of the programs authorized under the Indian Health Care Improvement Act, Title V -- "Health Services for Urban Indians" are treated as formula grants for the purposes of the allocation of funds. For the purposes of this chapter, however, these Title V programs remain classified as project grants.

Finally, the IHS also administers a number of noncompetitive grant programs that are the result of specific legislation, congressional line-item authorizations, or specific appropriations language. Usually, such non-competitive, single source funding targets assistance to one or several specified institutions or organizations.

- B. Current IHS Grant and cooperative Agreement Programs. In FY 1995, the IHS is actively administering 26 grant and cooperative agreement programs. These active programs are each listed in chapter Exhibit 5-19.6-A, which follows at the end of this section.

For each program listed in Exhibit 5-19.6-A, the common name of the program is followed by (1) a brief reference to the authorizing legislation, and (2) an estimate of the total dollars awarded in FY 1994.

(5-19.6 Continued)

- C. Unfunded Authorizations. In addition to the current, active IHS grant and cooperative agreement programs discussed under the preceding subsection, the IHS also has a "contingent responsibility" for a number of additional programs that are authorized under current legislation but for which no appropriated funds have been provided by the Congress in either FY 1994 or FY 1995.

An example of such an unfunded program currently authorized under the Indian Health Care Improvement Act (IHCIA), P.L. 94-437, as amended through P.L. 102-573, the Indian Health Amendments of 1992, is the American Indians into Psychology Program (IHCIA, Section 217).

5-19;7 PLANNING AND BUDGETING

- A. General. The grants and cooperative agreements planning and budgeting process begins in April for the next fiscal year and ends in the fiscal year in which the last award funds are outlaid. At the end of the period of performance, established closeout procedures must be complied with.

In between the grant playing and the grant closeout processes, the notification and receipt of appropriated funds, the selection of grant awardees and the making of awards, and the post award administration processes will occur.

B. Planning.

- (1) Summary of Process Planning for the next award cycle for grants and agreements should begin not later than 6 months prior to the new fiscal year. This planning process should include both a review of recent fiscal years patterns of required grant funds for each authorized grant and cooperative agreement program, with special attention paid to trends that suggest a need for either greater or lesser funds in the next fiscal year.

This process further should include an analysis of any changes in funding requirements due to changes in the terms of any program's authorizing legislation, and in the funding necessary to continue ongoing projects. This analysis must also take into account any new, continuing, or deleted congressionally earmarked funds, and any line-item program specific funding levels that must be adhered to.

During this planning process, special attention should also be given to the justification for the need for continued funding in the next fiscal year for each grant program. In an era of tight Federal budgets and competing service needs, this planning process also should

(5019.7B Continued) ₃ _

consider relative priorities for funding among various grant programs.

- (2) ~~Grants Program Announcement Plan~~ Effective in FY 1993, the Office of the Assistant Secretary for Management and Budget instituted a requirement for an annual "Grant Program Announcement Plan."

This grant announcement plan remains a current requirement for all IHS offices that anticipate announcing a competitive grants program for the forthcoming fiscal year. Typically, this plan is to be completed and forwarded to the Grants Management Branch approximately six months prior to the start of the next fiscal year. For example, in the case of FY 1996, the deadline for the completed "Grant Program Announcement Plan" was April 20, 1995.

A copy of the FY 1996 cover memorandum for the "Grants Program Announcement Plan," and the current instructions and format for the plan, are included at the end of this section as Manual Exhibit 5-19.7-A.

- c. BUDGETING. Once congressional funding amounts, and any special terms or conditions, are known for each IHS grant and cooperative agreement program, the responsible IHS grants administration managers are to begin the process for the expeditious selection of grant awardees, and the actual allocation of grant award funds. Before this award process can occur, responsible grants program managers must ensure each program's appropriated funds have been apportioned and are available for obligation by the IHS.

Additional discussion of the grant selection and award process and of post award administration, are provided in the next two sections of this IHM chapter.

5-19.8 PREAWARD AND AWARD PROCESS

- A. Overview. In general, grants and cooperative agreements that are administered by the IHS follow established HHS and PHS pre-award and award policy requirements.

Currently, two PHS documents are the principal sources for such pre-award and award policies and procedures: (1) the PHS Grants Administration Manual which, became effective July 1, 1986, with periodic partial supplements and updates since then, and (2) the PHS Grants Policy Statement- (Revised, April 1, 1994).

The purpose of this Section is to provide a brief overview of the pre-award and award guidance provided by these two PHS documents, including references for further followup where appropriate. This Section also describes certain grant and cooperative agreement policies that are unique to the-IHS.

- B. preaward Process PHS grants and agreements pre-award policies and procedures are fully summarized under Section 4 -- "Pre-award Policies and Considerations" of the PHS Grants Policy Statement (Revised, April 1; 1994). Further amplification on these policies and procedures is provided under chapter I -- "General Policies" of the Grants Administration -

In brief, the IHS pre-award process begins when the IHS publishes a program announcement on the availability of financial assistance to carry out specified health-related activities. This pre-award process continues with the preparation of the application by the Indian tribe, organization, individual, or other entity that is requesting grant or cooperative agreement funding, including any external or internal IHS reviews. Finally, the pre-award process culminates with the IHS awarding office decision concerning whether or not to make a grant or cooperative agreement award.

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(5019.8B Continued)

- (1) Program Announcements The IHS is required to publish certain types of documents-in the Federal Register for its discretionary grant programs, including the Indian scholarship and training awards that are made directly to individuals. In some instances, however, the IHS may publish an announcement with limited distribution that is not published in the R e g i s t e r .

The IHS documents that are required to be published in the Federal Register currently

- (a) Program regulations.
- (b) Program announcements (except in certain limited instances discussed in the preceding paragraph) containing such information as is summarized in the Catalog of Federal Domestic Assistance and/or other IHS descriptive information.
- (c) A statement regarding the availability of funds.
- (d) Notice of the availability of other materials and information about the program when such materials and information have not already been included under the preceding three items.

The IHS office responsible for awarding a grant or cooperative agreement is also responsible for making program information available to the interested public, and for promoting the dissemination of program information. The IHS Grants Management Officer is responsible for providing technical assistance on business management matters and grants policy issues. Project Officers are responsible for providing assistance on the programmatic aspects of a particular program or project.

(5019.8B Continued)

- (2) **Application** The authorizing legislation and regulations provide eligibility criteria for each IHS grant and cooperative agreement program.

Applicants and grantees under IHS grant and cooperative agreement programs must comply with a number of public policy requirements and use the appropriate application form as prescribed by the HHS, the PHS, and/or the IHS. In general, these policies are intended to ensure fairness, equity, fiscal, and other protections in activities funded through IHS assistance.

The application form used to apply for an IHS grant is Form PHS-5161, which is prescribed and approved **by** Office of Management and Budget.

- C. **Application Receipt** The IHS Headquarters Grants Management Branch (GMB) is the central point for the receipt and initial processing of all IHS grant and cooperative agreement applications, and related documents for all programs serviced **by** that Grants Management Officer.

Competing applications, that is, those subject to independent objective review requirements generally* will be considered "on time" if they are received on or before the established deadline date, or are sent on or before the deadline date specified in the program announcement or in the application kit materials. Applicants should request a legibly dated U.S. Postal Service postmark, or obtain a dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing. Late competing applications not accepted for processing may either be returned to the applicant or held for the next regularly scheduled review cycle.

(5-19.86: Continued)

Applications for noncompeting continuation awards will be considered on time if they are sent by the established deadline date. The late submission or receipt of a noncompeting continuation application may result in a delay in the issuance of the continuation award, during which time no additional Federal funds will be awarded.

- D. Preliminary Screening. A designated IHS official may determine that a competing or noncompeting application is nonconforming if it cannot be properly evaluated, or its deficiencies cannot be remedied, before award, thereby ending the review process for that application. For this purpose, a "nonconforming application" is one that does not meet the requirements of the program announcement to which it is responding because it omits required material, contains material not permitted under the announcement, is submitted by an ineligible applicant, or omits any assurance or other document required to be submitted with the application. The IHS will return nonconforming applications to the applicant. Correction of the deficiencies in noncompeting applications should be made as soon as possible, and the application should be returned to the IHS awarding office in order to expedite processing.

An applicant may withdraw an application from consideration at any time. A competing application that is withdrawn by the applicant before such application enters the formal review process will be returned to the applicant. Other applications may or may not be returned to the applicants, at the discretion of the IHS awarding office.

- E. Award Decisions. All IHS discretionary grant programs have established systems of objective awards. This includes demonstration programs when awards are made on the basis of competitive review, fellowships, and other training programs when awards are made to individuals. Within each of these programs; all new applications, competing

(5019.8E Continued)

continuation applications, and competing supplemental applications must compete for funding and receive an independent objective review.

This review includes a thorough and consistent examination of each application by persons knowledgeable in the field for which support is requested, who have no direct relationship with the organization or individual submitting the application, and who do not have any personal **or** vested interest in the award of a grant to that organization or individual. Peer review, a system using reviewers who are the professional equals of the principal investigator or program director who is to be responsible for directing or conducting the proposed project, is a form of objective review.

Peer review is legislatively mandated in some programs and in other programs is administratively required.

The objective review is generally conducted by a committee or group of field readers or by a combination of those methods. Reviewers may be Federal employees or non-Federal personnel. Peer review committee membership is usually entirely non-Federal. The use of non-Federal reviewers is - governed by the requirements of the Federal Advisory Committee Act and its implementing HHS regulations, 45 CFR Part 11.

Objective review of grant applications is intended to be advisory and not to replace the authority of the IHS awarding official to decide whether a grant shall be awarded. A review committee makes a recommendation for approval or disapproval, but the decision-making official has the sole authority to fund an application. Such decisions are based not only on the recommendations resulting from the IHS review process, but also on stated programmatic priorities, the availability of funds, Executive Order 12372 decisions, recommendations where applicable, and other information available to the awarding official.

(5019.8E Continued)

(1) **Cost Analysis** A cost analysis is normally performed for every grant application approved for funding by the IHS, except for awards such as fellowships, which do not require detailed budgets. A cost analysis involves obtaining cost breakdowns, verifying cost data, evaluating specific elements of cost, and examining data to determine necessity, reasonableness, and allowability of the cost reflected in the grant budget. The IHS GMO responsible for reviewing the application will determine the form and extent of the cost analysis based on information obtained from the review process, the amount and type of costs being requested, the nature of the project, and past experience with the applicant institution.

(2) **Reviews of Financial Systems and Management Capability** In cases where a prospective grantee has had no prior Federal grants or cost-type contracts, the applicant's financial management system and management capability must be reviewed before award, or within a reasonable time thereafter, to ensure its adequacy and acceptability and to aid the IHS awarding office in determining the organization's capability for financial stewardship of Federal funds.

(a) **Management Capability**. In order to assess the applicant/grantees management capability and to assist in monitoring the project, the GMO may require the submission of the following types of information:

- (i) Grantee administrative directives, organization charts, manuals, etc.
- (ii) Corporate charter and bylaws, financial statements, IRS Tax Exemption Certification, etc.

(5-19.83 Continued)

- (iii) Grantee accounting manuals, charts of accounts, procedures, etc.
 - (iv) Grantee personnel policies and directives.
 - (V) Grantee travel policies.
 - (vi) Grantee procurement procedures and property management instructions.
 - (V) Overall institutional audit reports affecting an individual grant or a number of grants.
 - (viii) Information on direct cost rates, items included in indirect cost pools, etc.
 - (ix) Copies of, or references to, awards with special conditions (including awards from other agencies), terminations, and any other useful background information.
- (b) Financial Capability. A review of an applicant's or grantee's financial management systems may also be undertaken if any of the following conditions exist:
- (i) The organization has had prior Federal grants, or cost-type contracts, but will be receiving IHS support for the first time.
 - (ii) The organization is known to have operational and/or financial problems in its dealings with commercial or governmental entities.

(5019.8E Continued)

(iii) The IHS award will result in a major change in the organization's overall operation.

(iv) The IHS awarding office is aware of information that raises doubts about the adequacy of the organization's financial and business management capabilities.

The decision whether to have a review and, if so, how comprehensive it should be, is made by the responsible Grants Management Officer. That official may conduct the review or have others conduct it. The review is made against the standards for recipient financial systems in 45 CFR Part 74, Subpart H, and 45 CFR Part 92, Subpart C.

PHS and IHS policy is to make awards to organizations which are competently managed, are responsible, and are committed to achieving the objectives of the grants they receive. However, experience has shown that a few organizations either have performed inadequately with respect to the management and use of IHS grant funds, or have serious potential deficiencies in business management systems. If an award is proposed to such an organization, in order to ensure proper stewardship of Federal funds and to assist the recipient in taking corrective action as quickly as possible, the organization should be designated as an "Exceptional Organization".

An exceptional organization is defined as one that shows evidence of poor business management practices. -Once an organization has been identified as exceptional, either during the review of an application, or any time during the life of the project, the IHS awarding office shall provide close monitoring and

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assistance as deemed appropriate by the Grants Management Officer. The Grants Management Officer may impose special grant conditions on the Notice of Grant Award as provided by 45 CFR Part 74.7, 45 CFR Part 74.72(e), and 45 CFR Part 92.12.

(3) **Notification to Unsuccessful Applicants.**

Within 30 days after the decision not to fund an application, a written notice must be sent to each applicant whose application has been disapproved or has been recommended for approval but is not expected to be funded during the current funding cycle. The notice must provide the reasons the application will not be funded or the name of an official to contact for more information. Notices shall also be sent to applicants whose applications have been deferred, i.e., where a final recommendation has not been made in order to obtain additional information or otherwise augment the review of an application.

An application that has been recommended for approval but is not funded in a particular review cycle may be considered for funding in subsequent review cycles. Such applications must then compete for funding with comparable applications recommended for funding in that review cycle. An applicant whose application is recommended for approval, but is not funded, will be advised whether, and for what period of time, the application will be held for reconsideration and possible funding. In no case may such an application be held for reconsideration for more than twelve months in an approved, but unfunded status, following the date of the funding decision. This policy is applicable to all IHS Discretionary grant programs, both construction and non-construction.

(5-19.8F)

F. Award Process.

- (1) **Terms of Award** The IHS will not award a grant without an approved application in conformance with legislative, regulatory, and policy requirements that describe the purpose and scope of the project to be funded. When an application is approved for funding, the GMO will prepare, or cause to be prepared, a Notice of Grant Award (NGA). For a valid grant to exist, the NGA must be signed by a duly designated IHS official and be released to the recipient.

The NGA includes, among other things, the dates of the budget period or other specified funding period, the approved budget, and the amount of Federal funds -authorized for obligation by the grantee during the period indicated. If applicable, the NGA will also indicate the dates of the approved project period and the amount of IHS support recommended for each subsequent budget period of the approved project. Award notices also contain special terms and conditions binding upon the award, and refer to all general terms applicable to the award. Any action such as the award of a supplement or the noncompeting extension of a budget period resulting in a change in the amount of funds awarded, a change in the duration of support, or a change in the terms and conditions of the award, will be reflected in a revised NGA.

The award document will also identify the approved grant application or its equivalent; indicate the grantee's specific matching requirement, if any; include the name of the individual (project or program director or principal investigator) who by the terms of the application will have responsibility for the conduct of the project or program; and, as appropriate, specify the option to be exercised

(5-19.8F Continued)

by the grantee concerning the disposition of general program income earned from the grant-supported activities.

The terms of the award, either contained in or referenced by the award document, will be binding on both the grantee and the IHS awarding office until such time as they are modified by a revised award notice signed by the GMO.

It should be understood that any revisions in the terms of an award are permitted only when consistent with applicable statutes and regulations, and are deemed to be in the best interest of the Government.

If the awarding office has determined that a prospective grantee is financially unstable, has a history of poor performance, or has a management system which does not meet the agency's standards, the awarding office may impose special conditions more restrictive than those prescribed by 45 CFR Part 74 (see 45 CFR Parts 74.7 and 74.72(e)) and 45 CFR Part 92 (see 45 CFR Part 92.12) and/or arrange for appropriate technical assistance to be provided to the grantee.

When a special condition requires the grantee to take specific action by a certain date, the condition will include a statement of the resulting IHS awarding office action to be taken in case of noncompliance. The IHS office responsible for imposing the special Conditions shall follow up on grantee performance to determine compliance and to lift, or recommend removal of, the special condition when it has been satisfactorily complied with. Removal of special condition⁶ will be communicated in writing to the grantee by the official authorized to, sign the-award notice.

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Under all PHS and IHS grant awards, a grantee indicates acceptance of the terms of an award by requesting funds from the grant payment system. If the grantee cannot accept the terms, it should notify the GMO. If resolution cannot be reached, the grant will become void. The grantee does not have appeal rights with respect to the terms appearing on the NGA, or with respect to a denial by the IHS awarding office of a request to change the terms of the award, since the actions and decisions resulting in the issuance of the award document are normally considered to be preaward determinations.

G. -Award and Funding.-

(1) Discretionary Grants. All PHS and IHS Discretionary grants are funded either by a single award covering the entire period of support, or incrementally by a series of successive awards. A single award covering the entire period of support will generally be used only when-

- (a) The project is exclusively for the construction, alteration and renovation, or acquisition of property.
- (b) The planned period of support will be less than 18 months.
- (c) This method of funding is required by the authorizing legislation, or known intent of Congress.

When incremental funding is used, projects may be programmatically approved for support in their entirety or in part, but funded in annual increments called budget periods.

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(5-19.8 (G)(1) Continued)

either the project **will** be funded or funded at those levels, and creates no legal obligation to provide such future support. Instead, these amounts represent projections of future funding levels based on the information available at the time of the initial award.

The actual amount of subsequent awards will be determined by-

- (a) The proposed project budget submitted with the annual noncompeting continuation application.
- (b) Evidence-of satisfactory progress.
- (c) Other information submitted in the continuation application for the budget period involved.
- (d) The availability of Federal funds.
- (e) The continuing need for the project by the Federal agency.

Funding of a noncompeting continuation award within a previously approved project period may be withheld for justifiable reasons.

Grant funds, including amounts awarded for the current budget period and estimated or actual unobligated Federal funds carried over from prior budget periods, are authorized for grantee use only in the current budget period, and only up to the amount specified by the IHS awarding office in an approved budget on an NGA. Carry-over funds are not automatically available to the grantee. The IHS awarding office exercises sole discretion as to the use of unobligated grant funds.

(5-19.8G Continued)

- (2) Construction Grants. Generally, for construction grants, one award is issued that covers the entire anticipated period of construction. Incremental funding is not normally used for construction grants. Congress appropriates multi-year funding to cover the cost of the construction project.
- (3) -Training Grants. IHS grants that provide funds for the training of individuals are made to institutions, and are funded incrementally as described previously. The grantee institution selects the trainees, whose periods of training may not necessarily coincide with the budget period of the-project. However, the periods of training may not extend beyond the end date of the project period, nor may stipends be paid from an expired grant for those grants that provide scholarships. The full amount of the stipend and tuition for each year covered by the scholarship is considered a cost of the budget period in effect on the beginning date of the scholarship unless other instructions are furnished by the IHS awarding office.
- (4) Individual Scholarships Individual scholarships are awarded in the IHS as grants to the individual students. Awards cover the cost of stipend, tuition, travel, and other related educational costs, such as books, uniforms, etc. Length of award varies based on the authorizing legislation from 10 to 12 months and may be continued for project periods of 2 to 4 years.

H. Award Payments. Grant payment requirements are prescribed in policies issued by the OMB and the Department of Treasury. These policies are designed to minimize the time elapsing between transfer of funds from the Federal Government and disbursement by a recipient.

(5019.8H Continued)

Recipients of project grant awards will receive payments through the HHS Payment Management System (PMS). This system is administered by the Federal Assistance Financing Branch, Office of the Assistant Secretary for Health. Operational guidance for recipients is contained in the "HHS Manual for Recipients Financed Under the PMS."

At present, the HHS uses several approved methods of grant payment including payment **by** Treasury Check and payment via a telecommunications direct deposit into a grantee's bank account (Smart Link).

Payment of individual scholarships is done by Treasury Check for stipends directly to the students or for tuitions directly to the educational institution. The Grants Management Branch (GMB) is responsible for initiating these payments.

5 - 1 9 . 9 — PQST-AWARD AD -

- A. Overview. In general, the post-award administration of IHS grants follows established HHS and PHS policy and procedural guidelines.

At present, one IHS and two PHS publications are the principal sources for current IHS post-award policies and procedures. These two PHS sources are: (1) the PHS Grants Policy Statement (April 1, 1994, Revision), and (2) the PHS Grants Administration Manual, which became effective July 1, 1986, with periodic partial supplements, and updates since then.

In addition, the Grants Management Branch of IHS publishes and updates annually the training document, 'Indian Health Service -- Post Award Grants Administration Training for Indian Health Service Grantees.'

Within the PHS Grants Policy Statement Section 8 'Postaward Administration' in particular should be consulted for policy guidance on a broad range of post-award issues, including project changes and accountability, reporting, records retention, appeals, audits, and grant closeout.

B. Responsibilities of Grant Program Officials.

Postaward activities involve a particularly close coordination between program and grants management staff. Although activities listed below are presented in terms of Program Official responsibilities, there needs to be a team approach with appropriate collaboration and exchange of information between Program Officials and the Grants Management Specialists. With regard to postward responsibilities, the Program Official:

- (1) Provides **direct** consultation and assistance to grantees concerning programmatic or technical matters as requested.

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(5-19.98 Continued)

- (2) Conducts site assessments as warranted by program or project needs, or as requested by the grantee to substantiate progress and compliance with laws, regulations, and policies.
- (3) Evaluates all projects for programmatic performance progress and any changes (e.g., in objectives or methodology), using information gathered from on-site reviews, reviews of financial, progress, and other reports, correspondence, and other sources. Identifies potential or existing programmatic or business management problems, and shares with appropriate staff information and/or findings concerning those problems. Participates with other staff, as appropriate, in the resolution of those problems and recommends actions for the -- resolution of the problems.
- (4) Serves as focal point for responding to technical and programmatic correspondence from the grantee.
- (5) Provides input to Grants Management staff on correspondence from grantees on business management issues.
- (6) Provide6 information a6 to whether or not special programmatic conditions placed on the award have been met and should be released or other action taken.
- (7) Assists in ensuring that grant project expenditures are in accordance with law, regulations, and grants policy.
- (8) Thoroughly document6 all on-site reviews and discussiOn with the recipient thay may influence the administration of the project in the official grant file maintained by the Grant6 Management Specialist at IHS Headquarters in Rockville, Maryland.

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- (9) Communicates regularly with any other program staff having responsibility for various aspects of the program to keep apprised of the progress of individual projects, and of issues that need resolution.
- (10) Assists the recipient, where appropriate, with respect to the development of an action plan for the conduct of subsequent years of the grant project, including the review of the technical aspects of any requests for extension of the final budget period.
- (11) Provides input to the Grants staff on requests for any rebudgeting, or other actions, which require PHS prior approval.
- (12) Provides assistance to Grants Management staff in the closeout of the project including, but not necessarily limited to, a review and/or evaluation of the final progress report, publications, and other required reports.

In summary, the Program Official evaluates grantee performance to ensure that satisfactory program progress is achieved by the grantee. Program Officials are required to review and formally approve interim and final grantee program progress reports and final products, to certify that the grant was successfully completed at the end of its project period, and to establish that the closeout process can proceed.

C. Grantee Responsibilities.

The responsibilities of grantees under an IHS grant or cooperative agreement award are, in general, the same as those required of other PHS awardees. In particular, IHS grantees should consult the following subsections under Section 8 of the PHS Grants Policy Statement: for further guidance: Changes in Expenditure/Activities; Changes in Project; Prior

(5019.9C Continued)

Approval Authorities; Requests for Approvals; Property Management and Accountability; Management Systems and Procedures; Fraud, Abuse, and Waste; Standards of Conduct for Employees; Monitoring; Reporting; Record Retention and Access; Suspension, Termination, and Withholding; Audit; and Closeout.

Grantees are responsible for knowing and carrying out the terms and conditions of any individual grant or cooperative agreement award. Any questions concerning such awards should be directed to the appropriate Grants Management Specialist or Program Official.

- E. IHS Grant Appeal Procedures Section 8 of the pzIs . Grants Policy Statement contains a brief discussion of grant appeals procedures as these concern PHS grants and cooperative agreements.

Effective as of the date of this IHM chapter, these PHS grant appeal procedures are supplemented by the following IHS specific grant appeal procedures:

(1) Policy.

- (a) Assistance awards, including grant and cooperative agreements, used by IHS that provide assistance are subject to grant appeals regulations contained in 42 CFR Part 50, Subpart D, "Public Health Service (PHS) Grant Appeals Procedure"; 45 CFR Part 16, 'Procedures of the Departmental Appeals Board'; and 45 CFR Part 75, 'Informal grant appeals procedure.'
- (b) This grant appeals procedure applies to all project grant (cooperative agreement) programs authorized for funding by IHS. These include but are not limited to: grants under the Indian Self-Determination

(5-19.93 Continued)

and Education Assistance Act, P.L. 93-638, Section 104(b); Indian Health Care Improvement Act, P.L. 94-437, Section 102; and the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986, P.L. 99-570, Section 4228(c)(1).

Grants in-lieu-of contracts awarded under Section 102, P.L. 93-638, as amended, shall be processed under the appeal procedures for P.L. 93-638 "non-procurement" contracts. Such grants do not come within the appeal authority of 42 CFR Part 50, Subpart D, or 45 CFR Part 16.

- (c) This grant-appeals procedure does not apply to procurement contracts or to assistance to individuals, e.g., scholarship award⁶ or loan repayments.
- (d) The Director, IHS, or his or her designee, shall be responsible for administering the IHS grant appeals procedure with regard to adverse determination⁶ made by Headquarter⁶ or Area Office officials concerning assistance awards. With the effective date Of this chapter, the Director,. IHS, has designated the Associate Director, Office of Planning, Evaluation, and Legislation (OPEL), as the responsible official.
- (e) This procedure is for informal preliminary resolution of disputes with grantees before submission to the Departmental Appeals Board. Disputes must be of an adverse determination, in writing, made by an IHS Headquarters or Area Office official.

(5-19.93 Continued)

(2) Appeals Committee.

The Associate Director, Office of Planning, Evaluation, and Legislation (OPEL), IHS, shall appoint a permanent Chairperson of the IHS Grant Appeals Committee. A minimum of two additional IHS employees shall be appointed by the Associate Director, OPEL, to serve on the Appeals Committee on a case-by-case basis. These additional members may be appointed from IHS Headquarters offices and/or from Area offices other than those involved in the adverse determination. The Appeals Committee shall consist of at least three members, to include the Chairperson.

~~(3) Adverse Actions Which May Be Appealed- ..~~

- (a) Termination, in whole or in part, of a grant for (1) failure of the grantee to carry out the approved project in accordance with the applicable laws and the terms and conditions of such assistance, or (2) failure of the grantee otherwise to comply with any laws, regulation, PHS policy, assurance, term, or condition applicable to the grant.
- (b) A determination that an expenditure not allowable under the grant has been charged to the grant or that the grantee has otherwise failed to discharge its obligation to account for grant funds.
- (c) A determination that a grant is void.
- (d) Denial of a non-competing continuation award under the project period system of funding when the denial is for failure to comply with the terms of a previous award.

'> (5-19.93 Continued)

(4) ~~-Notification of Adverse Determination~~

All adverse determinations set forth in paragraph 3 above shall be made in writing by the awarding office to the grantee organization. The notification of such adverse determination shall be in sufficient detail to enable the grantee to respond and shall contain the following closing statement:

This determination may be appealed in accordance with the provisions of 42 CFR Part 50, Subpart D, Section 50.404, by requesting a review in writing. The request for review must be postmarked no later than 30 days after the postmark date of this letter and addressed to the Associate Director, Office of Planning, Evaluation, and Legislation, Indian Health Service, 12300 Twinbrook Parkway, Suite 450, Rockville, MD. 20852. Your request for review must clearly identify the question(s) in dispute, contain a full statement of your position with respect to such question(s), and the pertinent facts and reasons in support of such position. You must attach a copy of this determination to your submission. An extension of time may be approved by the Associate Director for good cause.

(5) Procedures.

- (a) Upon receipt, the grantee's request for review shall be forwarded to the Appeals Committee Chairperson for a determination as to whether the issue is appealable in accordance with the provisions of this policy. This information shall be provided to the Associate Director, OPEL, who shall

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0 (5-19.93 Continued) ,

promptly acknowledge receipt of the request for review and notify the grantee whether the request is within the scope of the IHS grant appeals procedure and, if so, whether it has been accepted for review. If it is determined that the IHS Grant Appeals Committee does not have jurisdiction under section 3 of these procedures, the Associate Director, OPEL, shall inform the grantee of its right to file an appeal with the Departmental Appeals Board since this exhausts the IHS grant appeals procedure. A copy of this notification shall be provided to the IHS official who rendered the original adverse determination. (See paragraph-5.h. for the appropriate language for this type of notification.)

- 4
- (b) When a request for review of an adverse determination has been filed, no further action may be taken by the IHS to carry out the adverse determination until such request has been disposed of, including the lapse of all further rights of appeal, except that the filing of a request for review shall not affect the IHS's authority to suspend assistance or otherwise withhold or defer payments under the grant during review proceedings.
 - (c) If- the grantee's request for review is accepted, the Chairperson of the Grant Appeals Committee will request from the official who made the adverse determination copies of all background material and documents that served as the basis for the determination, including the grant application, Notice of Grant Award(s), all pertinent correspondence between the parties to the appeals, audit data, and any other pertinent information available.

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This information shall be forwarded to the Chairperson, IHS Grant Appeals committee, who will establish the official appeals record.

- W The Grant Appeals Committee may, at its discretion, invite representatives of the grantee and the affected IHS office that issued the adverse determination to discuss pertinent issues with the review committee and to submit such additional information as it deems appropriate. The review committee may also obtain opinions from the Office of General Counsel.
- W The Grant Appeals Committee shall make an independent evaluation of the facts as presented by both the office that made the adverse determination and by the grantee.
- (f) Based on the Grant Appeals Committee's review and a majority vote, a written decision will be prepared for the signature of the Committee Chairperson and all members of the committee. If the vote by the committee members is not unanimous, dissenters will sign the decision and also prepare a note to the record stating their dissenting opinion. The written decision shall restate the issues and the basis for disposition of these issues, and include a description of the documents or information that were used as the basis for the determination.
- (g) The decision shall be transmitted to the parties involved in the dispute and to the Director, Division of Grants and Contracts, Office of Resource Management, Office of Management, Public Health Service, within 60 days from the date of the notification from the Associate Director, OPEL, to the

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(5-19.93 Continued)

grantee, as specified in paragraph 5.a above. If, due to extenuating circumstances, a decision cannot be transmitted within the 60-day period, the Grant Appeals Committee Chairperson shall notify the grantee and the IHS office that made the adverse determination of the status of the appeal before the expiration of the 60 days.

- (h) If the Grant Appeals Committee's decision is adverse to the grantee, the notice of such decision shall contain the following statement:

'This decision may be appealed in accordance with the provisions of 45 CFR Part 16 by requesting a review in writing. The request for review must be postmarked no later than 30 days after the postmark date of this letter and addressed to the Executive Secretary, Departmental Appeals Board, Department of Health and Human Services, 330 C Street, S.W., Washington, D.C. 20201. The request for review must clearly identify the question(s) in dispute and contain a full statement of your position with respect to such question(s) and the pertinent facts and reasons in support Of such position.'

- (i) Copies of all documents developed in the course of the appeal Shall be maintained in a separate appeals file **kept** by the Chairperson of the Grant Appeals Committee.

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5-19.10 MANAGEMENT CONTROL ISSUE : THE SINGLE AUDIT ACT.

- A. General** Once IHS grant funds have been awarded and expended by tribal governments, tribal organizations, or other IHS awardees, Federal audit requirements provide the IHS with one of its most significant management tools to monitor the use of funds, and to ensure the accountability of grantees.

The IHS audit requirements of grantees are determined by the provisions of the Single Audit Act, and are further described in OMB Circular No. A-128, which applies to Indian tribes, and OMB Circular No. A-133, which applies to educational and non-profit organizations.

8. **The Single Audit Act.** Overview In 1984, President Ronald Reagan signed into law Public Law 98-502, the Single Audit Act of 1984. Pursuant to the requirements of this statute, the Executive Office of the President, OMB, issued Circular No. A-128, "Audits of State and Local Governments" (and Indian tribes), on April 12, 1985.

In brief, the Single Audit Act requires State or local governments and Indian tribes that receive \$100,000 or more per year in "Federal financial assistance" to have an annual audit.

assistance includes "grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance or direct appropriations" provided by a Federal agency, such as the IHS.

Under the Single Audit Act, the term 'State' is defined to include any Indian tribe."

In turn, the term "Indian tribe" is defined to mean any Indian tribe, band, nations, or other organized group, or community, including any Alaskan Native village or regional or village corporation⁶ (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is

(5-19,10B Continued)

recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

- c. OMB Circular A-128 The scope of the required audit, as outlined under OMB Circular A-128, includes the requirement that the audit be conducted by an independent auditor in accordance with generally accepted auditing standards covering financial and compliance audits. In general, the audit is also to cover the entire operations of a State including an Indian tribe or local government.

OMB Circular No. A-128 is included in its entirety as Manual Exhibit 5-19.10-A at the end of this Section.

- d. OMB Circular A-133 Certain IHS recipients of grant awards are considered governed by the requirements of OMB Circular No. A-133, 'Audits of Institutions of Higher Learning and Other Non-Profit Institutions,' instead of OMB Circular No. A-128. In brief, OMB Circular No. A-133 requires non-profit institutions that receive \$100,000 or more a year in Federal award⁶ to have an audit made at least every 2 years.

OMB Circular No. A-133 is included in its entirety as Manual Exhibit 5-19.10-B at the end of this Section.

**5-19.11 MANAGEMENT CONTROL ISSUES: MANAGEMENT CONTROL REVIEW
METHODOLOGY AND THE FEDERAL MANAGERS' FINANCIAL
INTEGRITY ACT**

- A. Overview. This section of chapter 19 focuses on two specific management control policy issues that require special attention in the IHS management of grants and cooperative agreements.

These two management control issues involve: (1) the management control review methodology for IHS grants, and (2) the implications for grants management of the Federal Managers' Financial Integrity Act.

B. Management Control review methodology

The Management Systems Review Guide (GMSRG), December, 1991, is the primary tool used within HHS for the purposes of conducting certification of grants management systems, including the system used within the IHS. In addition, the GMSRG is also a resource for Agency review teams in fulfilling their oversight responsibilities for grant award and administration activities, including internal control reviews, and the identification of potential areas of material Weakness, as required by the Federal Managers Financial Integrity Act.

The GMSRG contains information on several types of grants management systems reviews, and provide6 a structured, and consistent, approach for each type.

Unless expressly modified in this Section of this chapter, the various procedures and guidances provided in the GMSRG are to be adhered to in reviewing, assessing, and evaluating IHS grants management procedures.

C. Federal Managers' Financial Integrity Act

On September 8, 1982, President Ronald Reagan signed into law the Federal Managers' Financial Integrity

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(5019.11C Continued)

Act of 1982, as Public Law 97-255. This legislation provided a **key**, new management tool to the IHS, and other Executive agencies, to aid **in** the **task** of self-regulation.

In brief, Public Law 97-255 amended the Accounting and Auditing Act of 1950 (32 U.S.C. 66a) by adding new requirements that strengthened the internal accounting and administrative controls of each Executive agency and is described in OMB Circular No. A-123 Revised; 6/21/95. In accordance with standards established by the Comptroller General of the United States, each such agency is to provide reasonable assurances-

- (1) that Obligations and costs are in compliance with applicable law.
- (2) that funds, property, and other assets are safeguarded against waste, loss, unauthorized use, or misappropriation.
- (3) that revenues and expenditures applicable to agency operations are properly recorded and accounted for in order to permit the preparation of accounts, and reliable financial and statistical reports, and to maintain accountability over assets.

A6 the management unit with designated responsibility for IHS administration of grant and cooperative agreement program funds, the Grants Management Branch has a particularly important function in ensuring IHS compliance with these and **other** specific provisions of the Federal Manager's Financial Integrity Act.

The text of OMB Circular No. A-123 is included as Manual Exhibit S-19.11-A.

5-19.12 GLOSSARY

1. General.

This chapter section provides a glossary of terms that are commonly used in administering and managing IHS grants and cooperative agreements programs. In each case, the term is followed by a definition that is derived from a Public Health Service (PHS) or other Federal **Government** source. In the most cases, this source is either the -Grants Policy statement, the PHS General Administration Manual the definitions" section of P.L. 93-638, as amended through P.L. 103-437.

2. Definitions.

ABUSE	A wide variety of excessive services or program violations and improper practices not involving prosecutable fraud.
APPEALS	A process Specified in legislation whereby grant recipients may challenge certain adverse actions specified in regulations taken by the PHS awarding component.
APPLICATION WITH A TIME CONSTRAINT	A grant application that cannot be held for the next applicable review cycle of competitive applications if the objectives of the project are to be achieved. Examples of this type of application are those for disaster relief and for "now-or-never" research projects.
APPROVED BUDGET	The financial expenditure plan, including any revisions approved by the awarding party for the grant-supported project or activity. The approved budget consists of Federal (grant) funds and non-Federal participation, or

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and on any subsequent revised or amended award notice. Any expenditures charged to an approved budget that consists of both Federal and non-Federal shares are deemed to be borne by the grantee in the same proportions as the percentage of Federal/non-Federal participation in the overall budget.

AWARD

The provision of funds or direct assistance in lieu of funds based on an approved application and budget to provide general financial assistance to an organization or an individual to carry out an activity or program.

AWARDING COMPONENT

See "Component."

BLOCKGRANT

A mandatory grant that a Federal agency is required by statute to award, generally to States, if the recipient meets the compliance requirements of the statute and regulations. The IHS does not have block grant authority.

BUDGET

The financial expenditure plan approved by IHS to carry out the purposes of the grant-supported project. The budget is composed of both the Federal share and any non-Federal Share identified on the Notice of Grant Award.

BUDGET PERIOD

The interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.

COGNIZANT PROGRAM
OFFICE

A bureau, institute, center, division, or office level organization reporting directly to either a PHS agency head, Regional Health Administrator, or OASH staff office.

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COGNIZANT PROGRAM OFFICIAL	The individual who is head of the cognizant program office or the individual to whom that official has assigned the responsibility to perform specific functions.
COMPETING CONTINUATION APPLICATION	A request for financial or direct assistance to extend, for one or more additional budget periods, a project period that would otherwise expire. Continuation applications compete for funds with other continuation applications, with supplemental applications, and with new applications.
COMPETITIVE SEGMENT	The project period recommended for support (1 to 5 years) or each extension of the prior project resulting from the award of a competing continuation grant.
COMPONENT	An organizational unit within an agency that has the delegated authority to make awards.
CONFERENCE GRANT	support of a symposium, seminar, workshop, or any other organized and formal meeting lasting one or more days where people assemble to exchange information and views or explore or clarify a defined subject, problem or area of knowledge, whether or not a published report results from Such meeting. IHS does not have authority for these.
CONSTRUCTION PROGRAMS	Programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including, but not limited to, housing, law enforcement and detention facilities, sanitation and water Systems, roads, schools, administration and health facilities, irrigation and agricultural work, and water conservation, flood control, or port

CONTINGENCY FUND	Funds set aside for events that cannot be foretold with certainty as to time, intensity, or actual occurrences. Contingency funds do not include pension funds, self-insurance funds, and normal accruals. These are not allowable in an approved budget.
CONTRACTING UNDER A GRANT	A process whereby a grantee enters into a written agreement (the contract) with a third party (1) for the acquisition of property or services, or (2) for the conduct of prescribed activities or functions under the grant. In all instances, these agreements involve the acquisition of services or products that are designed to assist the grantee in carrying on the approved grant project.
CONVEY	The transfer of title to real property, by sale or otherwise, to another party.
COOPERATIVE AGREEMENT	A financial assistance mechanism to be used in lieu of a grant when substantial Federal programmatic involvement with the recipient during performance is anticipated by the PHS awarding office (see "Grant").
CRITERIA	The standards on which the scientific or technical merit of a grant application is judged.
DESIGNATED OFFICIAL	The individual assigned the responsibility to perform certain functions. This individual may be in the program chain of command. In the IHS the designated "program" official is normally the Associate Director or Area Director .
DIRECT ASSISTANCE	A financial assistance mechanism whereby goods or services are provided to

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	assistance generally involves the assignment of Federal personnel or the provision of equipment or supplies, such as vaccines.
DIRECT COSTS	Costs that can be specifically identified with a particular project or program.
ELIGIBLE GRANTEE	An institution eligible to receive grants from PHS agencies, as defined in the legislation or program announcement.
ENVIRONMENTAL ANALYSIS	A written review that lists the environmental effects that are expected to occur as a result of the proposed action; defines the extent of those effects and describes the environment(s) that will be affected, both current and future. It also describes explicit requirements or safeguards that are introduced as part of the proposed action to avoid or reduce the extent of the effects.
EQUIPMENT	For grantees subject to 45 CFR Part 74, an article of tangible nonexpendable personal property including exempt property, charged directly to an award and having a useful life of more than 1 year and an acquisition cost of \$5,000 or more per unit. For grantees Subject to 45 CFR Part 92, an article of tangible, nonexpendable, personal property having a useful life of more than 1 year and an acquisition cost of \$5,000 or more per unit.
EXPIRATION DATE	The date signifying the end of the current budget period, as indicated on the Notice of Grant Award, after which the grantee does not have authority to obligate 'grant funds.
FEDERAL FINANCIAL	Transfer of money, property, or other

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stimulate a public purpose authorized by statute.

FEDERAL INSTITUTION

A Cabinet-level department or independent agency of the Executive Branch of the Federal Government or any component organization of such a department or agency.

**FEDERALLY RECOGNIZED
INDIAN TRIBAL
GOVERNMENT**

See 45 CFR Part 92.3.

FINANCIAL EVALUATION

A process involving both a cost analysis and a determination of the adequacy of a grantee's accounting system.

FRAUD

The-obtaining of something of value, unlawfully, through misrepresentation.

**FREEDOM OF
INFORMATION OFFICER**

An officer of the Department who has been delegated authority under the provisions of the BBS Freedom of Information regulation.

FRINGE BENEFITS

Regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave and military leave; and employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs, and the like.

FULL-TIME TRAINEE

An individual associated with an institution who is pursuing a course of study or training that constitutes a full-time workload in accordance with the institutions policies.

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' FUNDED APPLICATION '	An application for a new competing continuation (renewal), noncompeting continuation, or competing supplemental grant for which a Notice of Grant Award has been issued.
GRANT	A financial assistance mechanism whereby money and/or direct assistance is provided to carry out approved activities. A grant (as opposed to a cooperative agreement) is to be used whenever the PHS awarding office anticipates no Substantial programmatic involvement with the recipient during performance of the financially assisted activities. Grants can be classified on the basis of type of activity(ies) supported (research, training, Service, etc.)degree of discretion allowed the awarding office (mandatory or discretionary); and/or method of determining mounts of award (negotiated basis or formula).
GRANT-APPROVED PROJECT/ACTIVITIES	Those activities specified or described in a grant application, plan, or other document that are approved by the PHS . awarding office for funding or changes subsequently approved by the PHS awarding office Grants Management Officer. For purposes of this definition, it does not matter whether Federal funding constitutes all or only a portion of the financial support necessary to carry out such activities.
GRANTEE	The individual or organizational entity to which a grant (or cooperative agreement) is awarded and which is responsible and accountable both for the use of the funds provided and for the performance of the grant-supported project or activities. The grantee is the entire legal entity even if only a particular Component is designated in

GRANTS MANAGEMENT
BRANCH (GMB)

The IHS Headquarters office responsible for the award of all Headquarters grants and cooperative agreements and for the oversight of satellite Area Offices delegated grants signatory authority.

GRANTS MANAGEMENT
OFFICER (GMO)

The PHS official responsible for the business management aspect of particular grants or cooperative agreements. The GMO serves as the counterpart to the business officer of the grantee organization. In this capacity, the GMO is responsible for all business management matters associated with the review, negotiation, award, and administration of grants, and interprets grants administration policies and provision. He or she works closely with the program or project officer who is responsible for the Scientific, technical, and programmatic aspects of the grant (see "Program/Project Officer").

GRANTS POLICY
STATEMENT

The principal document that provides guidance on policies, procedures, and regulations applicable to the administration of PHS grants and cooperative agreements.

INDIAN

For the purposes of IHS grant and cooperative agreement programs, a person who is a member of an 'Indian tribe' as this term is defined in this Section.

INDIAN TRIBE

Any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible

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provided by the United States to Indians because of their status as Indians.

INDIRECT COSTS

Costs that are incurred by a grantee organization for common or joint objectives and which therefore cannot be identified specifically with a particular project or program. Information on indirect costs may be obtained from the applicable Federal cost principles.

INSTITUTIONAL
OFFICIAL

An individual who has the authority to sign for the institution, making a commitment on behalf of the institution.

LIMITED COMPETITION

Administrative requirements that place limitations on (1) the eligibility of entities or type of entities that may apply, (2) the geographic location of the project, or (3) the time available for review and award.

LOBBYING

The use of Federal (appropriated) or non-Federal funds to influence the Executive or Legislative Branches of the Federal Government in connection with a specific grant or cooperative agreement.

LOCAL GOVERNMENT

See '45 CFR Part 92.3.

MAINTENANCE OF
EFFORT

A requirement contained in certain legislation, regulations, or administrative policies that a recipient must maintain a specified level of financial effort in the health area for which Federal funds will be provided in order to receive Federal grant funds. This requirement is usually given in terms of a previous base year dollar amounts.

MANAGEMENT SERVICES

Those services that are an integral part of the administration of a grant project and which contribute materially to the

personnel services, procurement
services, and ADP services.

9

MATCHING

The value of third-party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government. Where matching is not required by law or regulation, matching may be administratively required by the IHS awarding office. Costs used to Satisfy matching requirements are subject to the same policies governing allowability as other costs under the approved budget.

MAXIMUM COMPETITION

All eligible entities may apply for funds under a-particular financial assistance program.

MINORITY

Minority group members include Black Americans, Hispanic Americans, Native Americans (American Indians, Eskimos, Aleuts, or Native Hawaiians), Asian Pacific Americans, and members of such other groups as may be designated, from time to time; by the Small Business Administration.

**MISCONDUCT IN
SCIENCE**

Misconduct in science means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

MODULAR UNIT

A prefabricated portable unit designed to be moved to a site and assembled on a foundation to serve as a dwelling or a place of business.

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MONITORING	A process whereby the programmatic and business management performance aspects of a grant are reviewed by assessing information gathered from various reports, audits, site visits, and other sources
MTJLTIEAR FUNDING {o	The funding of a grant project for a period of 12 months and one day, or longer, from a single annual appropriation. The term does not include a no-cost extension of an existing grant.
NAMECHANGE	An action whereby the name of an organization is legally changed without otherwise affecting the rights and obligations of the parties involved.
NEGOTIATION AGREEMENT	The document that formalizes the establishment of indirect cost rates and provides information on the proper application of the rates.
NEW APPLICATION	A request for financial or direct assistance for a project or program not currently receiving PHS financial assistance.
NONCOMPETING CONTINUATION APPLICATION	A request for financial or direct assistance for a second or subsequent budget period within a previously approved project period (see "Project Period").
NONCOMPETING EXTENSION	PHS approval of additional time for a budget period, normally not to exceed 12 months for any budget period, including the final budget period of a previously approved project period. The extension may be made with or without additional funds. Notice of extension must be made through the issuance of a revised Notice of Grant Award.

NONGOVERNMENTAL
ORGANIZATION

A public or private institution of higher education, a public or private hospital, an Indian tribe or an Indian tribal organization that is not a federally recognized Indian tribal government, a quasi-public or private nonprofit organization, or a commercial organization. The term does not apply to an individual, Federal agency, foreign or internal organization (such as an agency United Nations), Government-owned contractor-operated facility, or research center providing continued support for mission-oriented large-scale programs that are Government owned or controlled or are developed as federally funded. Research and Development Centers under Office of Federal Procurement Policy Letter 84-1.

NOTICE OF GRANT
AWARD

The legally binding document that notifies the recipient and others that a grant **or** cooperative agreement has been made, contains **or** references all terms of the award, and documents the obligation of Federal funds in the IHS accounting system.

OBJECTIVE REVIEW

The thorough and **consistent** examination of applications by persons knowledgeable in the field of endeavor for which support is requested to provide advice to awarding officials based on an evaluation of the scientific or technical merit or other relevant aspects of the proposal.

PART-TIME TRAINEE

An individual attending an educational institution who is pursuing a course of study or training that constitutes a part-time workload in accordance with the institution's policies. Within the

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	Programs, part-time cannot be less than 6 semester hours or the equivalent for a quarterly system.
PENDING APPLICATION	An application still in the review process for which there has not been a final funding decision.
PERCENTILE RATING	A number computed to indicate the relative position or ranking of an application based on all of the priority scores assigned by a review committee over a period of 1 year.
PERSONAL PROPERTY	Tangible personal property having a useful life of more than 2 years and an acquisition cost of \$5,000 or more per unit.
PHS AWARDING OFFICE	The office responsible for the award, administration, and monitoring of grant-supported activities. The designated Grants Management Officer and program officer are representatives of this office. The use of this term throughout this document as a point of contact and the focal point for requesting necessary prior approvals refers specifically to the Grants Management Officer.
PHS PRIOR APPROVAL	<p>In a number of policy areas, written prior approval from the PHS awarding office is required before certain activities may be undertaken, funds expended, or the cost of actions may exceed a certain dollar level. These requirements are specified in this policy statement or appear in documents included or referenced herein.</p> <p>Where prior approval is needed, it must be obtained by the grantee institution in writing from the Grants Management Officer. All references in this document to PHS prior approval,</p>

PREAPPLICATION	<p>For subgrants and contracts awarded by grantees, the prior approval authority is usually the grantee. However, the grantee may not approve any action or cost that is inconsistent with the purpose or terms of the Federal grant. If an action by a subgrantee or contractor will result in a change in the overall grant project or budget requiring granting agency approval, the grantee shall obtain that approval from PHS before giving its approval to the subgrantee or contractor. In a few instances, PHS must grant prior approval for activities or actions taken by subgrantees and contractors under grants.</p>
PREAPPLICATION	<p>A summary statement of the intent of the applicant to request Federal funds. It is used by PHS to determine the applicant's eligibility, determine how well the proposed project can compete with other similar applications, and eliminate any proposals that have little or no chance of Federal funding before applicants incur significant expenditures for preparing an application. Preapplications are required for all construction projects for which the need for Federal funding exceeds \$1,000,000. Preapplications may also be required for other grant programs at the option of the PHS awarding office.</p>
PRIORITY SCORE	<p>The process by which those applications that are recommended for approval are assigned a value of merit by each individual committee member or field reader.</p>
PROGRAM	<p>A coherent assembly of plans</p>

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contained within an administrative framework, the purpose of which is to implement an organizations mission or some specific program-related aspect of that mission. For purposes of this policy statement, a PHS financial assistance program refers to a program that carries out its mission by supporting activities in other organizations through the grant or cooperative agreement mechanism.

PROGRAM
DIRECTOR/PROJECT
DIRECTOR/PRINCIPAL
INVESTIGATOR

An individual designated by the recipient to direct the project or program being supported by the grant. He or she is responsible and accountable to recipient organization officials for the proper conduct of the project or program; The organization is, in turn, legally responsible and accountable to PHS for the performance and financial aspects of the grant-supported activity.

PROGRAM INCOME

All gross income earned by a grantee or subgrantee from activities, part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost toward meeting a matching requirement of the grant.

PROGRAM PRIORITIES

The standards which describe the programmatic preferential ranking of activities. Program priorities are used to select which of the grant applications recommended for approval under objective review procedures are funded.

PROGRAM/PROJECT
OFFICE

The PHS awarding office official who is responsible for the technical, scientific, or programmatic aspects of a grant. Such individuals deal with grantee organization staff to ensure programmatic progress and work closely with the PHS Grants Management Officer

PROJECT ACTIVITIES	Activities of a substantive nature and described in the approved grant application.
PROJECT PERIOD	The total time for which support of a project has been programmatically approved. A project period may consist of one or more budget periods. The total project period comprises the original project period and any extensions.'
CP	
PROJECT PERIOD EXTENSION	(1) Competing Extension - the extension of a project period, which would otherwise terminate, to provide support for one or more additional budget periods; and (2) Noncompeting Extension - the extension of a project period necessitated by an extension of a budget period.
PUBLIC HEALTH SERVICE	The organization primarily responsible for supporting the health-related activities of HHS. As used in this chapter, references to PHS mean the PHS awarding offices (see PHS Awarding Office"). .
RANKING OF APPLICATIONS	The process by which the individual scores are aggregated to form a composite score that serves as the basis for an ordering of applications recommended for approval.
REAL PROPERTY	See 45 CFR Parts 74.132 and 92.3.
RECIPIENT	The grantee or, where subgrants are authorized by law, the subgrantee that receives PHS financial assistance in the form of grants or cooperative agreements.

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RECOMMENDED FOR APPROVAL	An application reviewed by a review committee, or group of field readers and/or a National Advisory Council that has been judged to meet specified scientific, technical, or other criteria.
RECOMMENDED FOR APPROVAL BUT UNFUNDED	An application reviewed and recommended for approval that does not meet the program priorities for funding in that particular review cycle but which may be considered for funding in a subsequent review cycle,.
RECOMMENDED FOR DEFERRAL	An application reviewed by a review committee or group of field readers and/or a National Advisory Council upon which a final recommendation has been postponed to obtain additional information or otherwise augment the review of that application.
RECOMMENDED FOR DISAPPROVAL	An application reviewed by a review committee or group of field readers and/or a National Advisory Council that has been judged deficient in its scientific, technical, managerial, or other relevant aspects. Such a recommendation by a National Advisory Council, where a council review is legislatively mandated, is conclusive and cannot be overturned by the administering program.
RESPONSIBLE OFFICIAL	The IHS or PHS agency head or OASH staff office head for centralized programs, and the Regional Health Administrator for decentralized grant programs.
REQUEST FOR APPLICATION (PROGRAM ANNOUNCEMENT)	A statement providing information including the eligibility, deadline date of the announcement, program title, <u>Catalog of Federal Domestic Assistance</u>

assistance, and other information as described in PHS GAM Section 115.2. 'Information for Potential Applicants.'

SELF-DETERMINATION
CONTRACT

0"

A contract -- or a grant or cooperative agreement utilized under section 9 of P.L. 93-638, as amended through P.L. 103-437 -- entered into under title I of P.L. 93-638 between a tribal organization and the Secretary of HHS or the Secretary of the Interior for the planning; conduct, and administration of programs or Services that are otherwise provided to Indian tribes and their members pursuant to Federal law.

SINGLE SOURCE

The eligibility for application and award is administratively limited-to only **one** entity. Award requires approval by PHS agency head.

SMOKE-FREE WORKPLACE

consistent with PHS requirements, the term 'smoke-free workplace' means office space (including private offices and other work space), laboratory space, patient clinical areas, conference or meeting rooms, corridors stairways, lobbies, restrooms, cafeterias, and other public space.

SPECIAL PROVISIONS

Additional terms and conditions that are judged necessary to attain the objectives for which the grant is being made, facilitate postaward administration of the grant, conserve grant funds, or otherwise protect the interests of the Federal Government.

SPLIT FUNDING

A Single award only partially funded from one annual appropriation with the intent to supplement the award from a new fiscal year appropriation to provide the remainder of the funding originally

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STANDARD PROVISIONS	Terms and conditions that are required on each notice of grant award.
STANDING REVIEW COMMITTEE	A committee established under the Federal Advisory Committee Act on a continuing basis with a duration expected to exceed 1 year.
STATE GOVERNMENT	The governments of any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. For purposes of PHS grants, federally recognized Indian tribes are treated the same way as State governments. State institutions of higher education and State hospitals are considered nongovernmental organizations. for purposes of 45 CFR Parts 74 and 92 and this policy statement (see 45 CFR Parts 74.3 and 92.3).
STIPEND	A payment made to an individual under a scholarship or training grant in accordance with preestablished levels to provide for the individual's living expenses during the period of training.
SUBGRANT	An award of financial assistance in the form of money or property made under a grant by a grantee to an eligible recipient called a subgrantee (see 45 CFR Parts 74.3 and 92.3).
SUBGRANTING	A process whereby a grantee transfers money, property, services, or anything of value to an organization or individual, whether by grant, contract, or other mechanism, for the purpose of providing general financial assistance to that third party. Such a process is in contrast with that of the contracting process which involves the acquisition

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SUBSTANTIAL PROGRAMMATIC INVOLVEMENT	After award of a cooperative agreement, awarding office staff involvement to provide technical assistance and guidance to, or to coordinate or participate in, certain programmatic activities of award recipients to a degree Beyond their normal stewardship responsibilities in the administration of grants.
SUBSTANTIVE PROGRAMMATIC WORK	The primary project activities for which grant support is provided and/or a significant portion of the activities to be conducted under the grant.
SUCCESSOR-IN- INTEREST	A process whereby the rights and obligations to an IHS or PHS grant or grants are acquired incidental to the transfer of all of the assets of the grantee or all of that part of the assets involved in the performance of the grant. Such transfer may result from legislative or other legal action Such as a merger, divestiture, or other corporate change.
SUPPLEMENTAL APPLICATION	A request for an increase in support during a current budget period for the expansion of the project's scope or research protocol, or to meet increased administrative costs unforeseen at the time of the new noncompeting continuation or competing continuation application.
SUSPENSION	Temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee as specified by IHS or a decision by PHS to terminate the grant (see 45 CFR Parts 74.110 and 92.3).
TECHNICAL ASSISTANCE	The process where grants management and

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	counsel to grantee ⁶ regarding business, management, and administrative aspects of the grants to assist them in achieving program objectives.
TERMINATION	Permanent withdrawal of a grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire, including the voluntary relinquishment of that authority by the grantee (see 45 CFR Parts 74.110 and 92.3).
TERMS OF AWARD	All legal requirements imposed on a grant by the Federal Government, whether -by statute, regulation, or terms in the grant award document. Each Notice of Grant Award may include both standard and special provisions that are considered necessary to attain the objectives of the grant, facilitate postaward administration of the grant, Conserve grant funds, or otherwise protect the Federal Government's interests.
THIRD PARTY	Any organization legally distinct from the grantee (whether or not affiliated with the grantee) or any individual not employed by the grantee other than a consultant or volunteer acting directly under the grantees direction and control.
THIRD-PARTY IN-KIND CONTRIBUTIONS	See 45 CFR Parts 74.51 and 92.3.
TOTAL PROJECT COSTS	The total allowable costs incurred by the grantee institution to carry out an approved grant-supported project or activity, including costs charged to the PHS grant and costs contributed by the grantee as listed in the grant application or Notice of Grant Award and included in the Financial Status Report.

TRAILER	A portable vehicle built on a chassis which is designed to be hauled from one site to another by a separate means of propulsion (such as a car or a truck) and which serves, wherever parked, as a dwelling or a place of business.
TRAINEE COSTS	The costs in a training grant that are associated with the support of a trainee and include Stipends, tuition, and fees.
TRAINING GRANT (INSTITUTIONAL AWARD)	A grant or award made to an organization to support costs of training individuals in the particular programmatic area of concern.
TRAINING GRANT - TRAINING RELATED (NON-TRAINEE) EXPENSES	The cost6 in a training grant that relate to support services provided by the grantee to individual trainees, such as research supplies, equipment, and faculty salaries.
TRIBAL ORGANIZATION	The recognized governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by such governing body, or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. In any case where a grant is made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe Shall be a prerequisite to the letting or making of such grant.
UNFUNDED APPLICATION	An application that has been recommended for approval but is not ranked high enough to receive funding, or was disapproved for funding.

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UNSUCCESSFUL APPLICANT	An applicant whose application is disapproved or is recommended for approval but unfunded during the normal grant review and funding cycle (the review associated with each meeting of a National Advisory Council or the review of applications received pursuant to a single program announcement).
VOLUNTARY CONTRIBUTIONS	Contributions that the grantee makes toward the cost of the project in excess of that is required.
WASTE	The incurring of unnecessary costs as a result of deficient practices, systems, or controls.
WITHHOLDING OF SUPPORT	A decision by the awarding office not to make a noncompeting continuation award within a previously approved project period.

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5-19.14 APPENDIX

PART 26354 STANDARDS OF ETHICAL, CONDUCT FOR EMPLOYEES
OF THE EXECUTIVE BRANCH (Eff. 2-3-93)

Authority: 5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics
in Government Act of 1978); E.O. 12674, 54 FR 15159, 3
CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55
FR 42547, 3 CFR, 1990 Comp., p. 306.

Source : 57 FR 35042, Aug. 7, 1992, unless otherwise
noted.

Effective Date Note: At 57 FR 35042, Aug. 7, 1992, part
2635 was revised, effective February 3, 1993. For the
convenience of the reader, part 2635 remaining in
effect until February 3, 1993 follows the text of this
new part.

Subpart A-General Provisions

s 2635.101 Basic obligation of public service.

(a) Public service is a public trust. Each employee has
a responsibility to the United States Government and
its citizens to place loyalty to the Constitution, laws
and ethical principles above private gain. To ensure
that every citizen can have complete confidence in the
integrity of the Federal Government, each employee
shall respect and adhere to the principles of ethical
conduct set forth in this section, as well as the
implementing standards contained in this part and in
supplemental agency regulations.

(b) General principles. The following general
principles apply to every employee and may form the
basis for the standards contained in this part. Where a
situation is not covered by the standards set forth in
this part, employees shall apply the principles set
forth in this section in determining whether their
conduct is proper.

(1) Public service is a public trust, requiring
employees to place loyalty to the Constitution, the
laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that
conflict with the conscientious performance of duty.

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(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by Subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be Substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees Shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law, or the ethical Standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts;

(c) Related statutes. In addition to the standard⁶ of ethical conduct set forth in this part, there are conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees, 18 U.S.C. 201, 203, ... 205, 208 and 209, are summarized in the appropriate Subparts of this part and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to employee conduct are set forth in Subpart I and employee⁶ are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally or as employees of their specific agencies. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain the advice of an agency ethics official as needed.

s 2635.102 Definitions.

The definitions listed below are used throughout this part. Additional definition⁶ appear in the subparts or sections of Subparts to which they apply. For purposes of this part:

(a) Agency means an executive agency as defined in 5 U.S.C. 105 and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office or the Government of the District of Columbia.

(b) Agency designee refer⁶ to any employee who, by agency regulation, instruction, or other issuance, has been delegated authority to make any determination, give any approval, or take any other action required or permitted by this part with respect to another employee. An agency may delegate these authorities to any number of agency designees necessary to ensure that determinations are made, approvals are given, and other

actions are taken in a timely and responsible manner. Any provision that requires a determination, approval, or other action by the agency designee shall, where the conduct in issue is that of the agency head, be deemed to require that such determination, approval or action be made or taken by the agency head in consultation with the designated agency ethics official.

(c) Agency ethics official refers to the designated agency ethics official or to the alternate designated agency ethics official, referred to in S 2638.202(b) of this chapter, and to any deputy ethics official, described in S 2638.204 of this chapter, who has been delegated authority to assist in carrying out the responsibilities of the designated agency ethics official.

(d) Agency programs or operations refers to any program or function carried out or performed by an agency, whether pursuant to statute, Executive order, or regulation.

(e) Corrective action includes any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution, change of assignment, disqualification, divestiture, termination of an activity, waiver, the creation of a qualified diversified or blind trust, or counseling.

(f) Designated agency ethics official refers to the official designated under S 2638.201 of this chapter.

(g) Disciplinary action includes those disciplinary actions referred to in Office of Personnel Management regulations and instructions implementing provisions of title 5 of the United States Code or provided for in comparable provisions applicable to employees not subject to title 5, including but not limited to reprimand, suspension, demotion, and removal. In the case of a military officer, comparable provisions may include those in the Uniform Code of Military Justice.

(h) Employee means any officer or employee of an agency, including a special Government employee. It includes officers but not enlisted members of the uniformed services. For purposes other than subparts B and C of this part, it does not include the President or Vice President. Status as an employee is unaffected

by pay or leave status or, in the case of a special Government employee, by the fact that the individual does not perform official duties on a given day.

(i) Head of an agency means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

(j) He, his, and him include she, hers and her.

(k) Person means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

(l) Special Government employee means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

(m) Supplemental agency regulation means a regulation issued pursuant to S 2635.105.

s 2635.103 Applicability to members of the Uniformed Services.

The provisions of this part, except this section, are not applicable to enlisted members of the uniformed services. Each agency with jurisdiction over enlisted members of the uniformed services shall issue regulations defining the ethical conduct obligation of enlisted members under its jurisdiction. Those regulations shall be consistent with Executive Order 12674, April 12, 1989, as modified, and may prescribe the full range of statutory and regulatory sanctions,

including those available under the Uniform code of Military Justice, for failure to comply with such regulations.

S 2635.104 Applicability to employees on detail.

(a) Details to other agencies. Except as provided in paragraph (d) of this section, an employee on detail, including a uniformed officer on assignment, from his employing agency to another agency for a period in excess of 30 calendar days shall be subject to any supplemental agency regulations of the agency to which he is detailed rather than to any supplemental agency regulations of his employing agency.

(b) Details to the legislative or judicial branch. An employee on detail, including a uniformed officer on assignment, from his employing agency to the legislative or judicial branch for a period in excess of 30 calendar days shall be subject to the ethical standards of the branch or entity to which detailed. For the duration of any such detail or assignment, the employee shall not be subject to the provisions of this part, except this section, or, except as provided in paragraph (d) of this section, to any supplemental agency regulations of his employing agency, but shall remain subject to the conflict of interest prohibitions in title 18 of the United States Code.

(c) Details to non-Federal entities. Except to the extent exempted in writing pursuant to this paragraph, an employee detailed to a non-Federal entity remains subject to this part and to any supplemental agency regulation of his employing agency. When an employee is detailed pursuant to statutory authority to an international organization or to a State or local government for a period in excess of six months, the designated agency ethic6 official may grant a written exemption from subpart B of this part based on his determination that the entity has adopted written ethical standards covering solicitation and acceptance of gifts which will apply to the employee during the detail and which will be appropriate given the purpose of the detail.

(d) Applicability of special agency statutes. Notwithstanding paragraphs (a) and (b) of this section, an employee who is subject to an agency statute which restricts his activities or financial holdings

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-specifically because of his status as an employee. of that agency shall continue to be subject to any provisions in the supplemental agency regulations of his employing agency that implement that statute.

S 2635.105 Supplemental agency regulations.

In addition to the regulations set forth in this part, an employee shall comply with any supplemental agency regulations issued by his employing agency under this section

(a) An agency that wishes to supplement this part shall prepare and submit to the Office of Government Ethics, for its concurrence and joint issuance, any agency regulations that supplement the regulations Contained in this part. Supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of this part shall be:

(1) In the form of a supplement to the regulations in this part; and

(2) In addition to the substantive provisions of this part.

(b) After concurrence and co-signature by the Office of Government Ethics, the agency shall submit its supplemental agency regulation⁶ to the Federal Register for publication and codification at the expense of the agency in title 5 of the Code of Federal Regulations. supplemental agency regulations issued under this section are effective only after concurrence and co-signature by the Office of Government Ethics and publication in the Federal Register.

(c) This section applies to any supplemental agency regulations or amendments thereof issued under this part. It does not apply to:

(1) A handbook or other issuance intended merely as an, explanation of the standards contained in this part or in supplemental agency regulations;

(2) An instruction or other issuance the purpose of which is to:

(i) Delegate to an agency designee authority to make

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any determination, give any approval or take any other action required or permitted by this part or by supplemental agency regulations; or

(ii) Establish internal agency procedures for documenting or processing any determination, approval or other action required or permitted by this part or by supplemental agency regulations, or for retaining any such documentation; or

(3) Regulation⁶ or instructions that an agency has authority, independent of this part, to issue, such as regulation⁶ implementing an agency's gift acceptance statute, protecting categories of nonpublic information or establishing standard⁶ for use of Government vehicles. Where the content of any such regulations or instructions was included in the agency's standard⁶ of conduct regulation⁶ issued pursuant to Executive Order 11222 and the Office of Government Ethics concurs that they need not be issued as part of an agency's supplemental agency regulations, those regulations or instructions may be promulgated separately from the agency's supplemental agency regulations.

S 2635.106 Disciplinary and corrective action.

(a) Except as provided in S 2635.107, a violation of this part or of supplemental agency regulations may be cause for appropriate corrective or disciplinary action to be taken under applicable Government wide regulations or agency procedures. Such action may be in addition to any action or penalty prescribed by law.

(b) It is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases. However, corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this chapter.

(c) A violation of this part or of supplemental agency regulations, as such, does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person. Thus, for example, an individual who alleges that an employee has failed to adhere to laws and regulations that provide equal opportunity regardless of race, color, religion, sex, national origin, age, or handicap is

required to follow applicable statutory and regulatory procedures, including those of the Equal Employment Opportunity Commission.

S 2635.107 Ethics advice.

(a) As required by SS 2638.201 and 2638.202(b) of this chapter, each agency has a designated agency ethics official who, on the agency's behalf, is responsible for coordinating and managing the agency's ethics program, as well as an alternate. The designated agency ethics official has authority under S 2638.204 of this chapter to delegate certain responsibilities, including that of providing ethics counseling regarding the application of this part, to one or more deputy ethics officials.

(b) Employees who have questions about the application of this part or any supplemental agency regulation to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. An agency ethics official is required by 28 U.S.C. 535 to report any information he receives relating to a violation of the criminal code, title 18 of the United States Code.

subpart B--Gifts from Outside Sources

S 2635.201 Overview.

This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the

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exception set forth in this subpart.

S 2633.202 General Standards.

(a) General prohibitions. Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

- (1) From a prohibited source; or
- (2) Given because of the employee's official position.

(b) Relationship to illegal gratuities statute. Unless accepted in violation of paragraph (c)(1) of this section, a gift accepted under the standards set forth in this subpart shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C.

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(c) Limitations on use of exceptions. Notwithstanding any exception provided in this subpart, other than 2635.204 (j) , an employee shall not:

- (1) Accept a gift in return for being influenced in the performance of an official act;
- (2) Solicit or coerce the offering of a gift;
- (3) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain;

Example 1: A purchasing agent for a Veterans Administration hospital routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent has offered to meet with manufacturer representatives during his lunch hours Tuesdays through Thursdays and the representatives routinely arrive at the employee's office bringing a sandwich and a soft drink for the employee. Even though the market value of each of the lunches is less than \$6 and the aggregate value from any one manufacturer does not exceed the \$50 aggregate limitation in S 2635.204(a) on de minimis gift of \$20 or less, the practice of accepting even these modest gift on a recurring basis is improper.

(4) Accept a gift in violation of any statute. Relevant statutes applicable to all employees include:

(i) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty. As used in 18 U.S.C. 201(b), the term "public official" is broadly construed and includes regular and special Government employees as well as all other Government officials;

(ii) 18 U.S.C. 209, which, prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality; and

(iii) 41 U.S.C. 423(b)(2), which prohibits a procurement Official from seeking, accepting, or agreeing to receive any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of a competing contractor during the conduct of a Federal agency procurement. Implementing regulations, including exceptions to the gift prohibition, are contained in the Federal Acquisition Regulation, 48 CFR 3.104; or

(5) Accept vendor promotional training contrary to applicable regulations, policies or guidance relating to the procurement of supplies and services for the Government, except pursuant to S 2635.204(l).

(57 FR 35041, Aug. 7, 1992; 57 FR 48557, Oct. 27, 1992)

S 2635.203 Definitions.

For purposes of this subpart, the following definition⁶ shall apply:

(a) Agency has the meaning set forth in S 2635.102(a). However, for purposes of this subpart, an executive department, as defined in 5 U.S.C. 101, may, by supplemental agency regulation, designate as a separate

agency any component of that department which the department determines exercises distinct and separate functions.

(b) Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. It does not include:

(1) Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;

(2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;

(3) Loans from banks and other financial institutions on terms generally available to the public;

(4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

(5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his official duties;

(6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;

(7) Anything which is paid for by the Government or secured by the Government under Government contract;

Note: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR 301-1.6(b).

(8) Any gift accepted by the Government-under specific statutory authority, including:

(i) Travel, subsistence, and related expense⁶ accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to his official duties which take⁶ place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304-1; and

(ii) Other gift⁶ provided in-kind which have been accepted by an agency under its agency gift acceptance statute; or

(9) Anything for which market value is paid by the employee.

(c) Market value means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

Example 1: An employee who has been given an acrylic paperweight embedded with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable acrylic paperweight, not embedded with a logo, generally sells for about \$20.

Example 2: A prohibited source has offered an employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only \$20, the market value of the ticket is its \$250 face value.

(d) Prohibited source means any person who:

(1) Is seeking official action by the employee's agency;

(2) Does business or seeks to do business with the employee's⁶ agency;

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(3) Conducts activities regulated by the employee's agency;

(4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

(5) Is an Organization a majority of whose members are described in paragraph (d) (1) through (4) of this section.

(e) A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held his position as a Federal employee.

Note: Gifts between employees are subject to the limitations set forth in subpart C of this part.

Example 1: Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.

(f) A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee's knowledge and acquiescence to his parent, sibling, Spouse, child, or dependent relative because of that person's relationship to the employee, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by S 2635.205(a)(2) or for payments made to charitable organizations in lieu of honoraria under S 2636.204 of this chapter.

Example 1: An employee who must decline a gift of a personal Computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

(g) Vendor promotional training means training provided by any person for the purpose of promoting its products or services. It does not include training provided

under a Government contract or by a contractor to facilitate use of products or services it furnishes under a Government contract.

S 2635.204 Exceptions.

The prohibitions set forth in S 2635.202(a) do not apply to a gift accepted under the circumstance described in paragraphs (a) through (1) of this section and a gift accepted in accordance with one of those paragraphs will not be deemed to violate the principle set forth in S 2635.101(b). Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (1) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(a) Gifts of \$20 or less. An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds \$20, the employee may not pay the excess value over \$20 in order to accept that portion of the gift or those gifts worth \$20. Where the aggregate value of tangible items offered on a single occasion exceeds \$20, the employee may decline any distinct and separate item in order to accept those items aggregating \$20 or less.

Example 1: An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a Broadway play, tickets to which have a face value of \$30 each. The aggregate market value of the gifts offered on this single occasion is \$60, \$40 more than the \$20 amount that may be accepted for a single event or presentation. The employee may not accept the gift of the evening of entertainment. He and his spouse may attend the play only if he pays the full \$60 value of the two tickets.

Example 2: An employee of the Defense Mapping Agency has been invited by an association of cartographers to

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speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of \$18 and a book about the history of cartography with a market value of \$15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds \$20.

Example 3: On four occasions during the calendar year, an employee of the Defense Logistics Agency was given gift⁶ worth \$10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly \$50 limitation on gift⁶ of \$20 or less from any one person, the four gifts must be aggregated because a person is defined at S 2635.102(k) to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the \$50 aggregate limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, if he can accept the birthday present under the exception at S 2635.204(b) for gift⁶ based on a personal relationship.

Example 4: Under the authority of 31 U.S.C; 1353 for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency has accepted an association's gift of travel expenses and conference fees for an employee of its Office of Radiation Programs to attend an international conference on "The Chernobyl Experience." While at the conference, the employee may accept a gift of \$20 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although 31 U.S.C. 1353 is the only authority under which an agency may accept gift⁶ from certain non-Federal source⁶ in connection with it⁶ employees' attendance at such functions, a gift of \$20 or less accepted under S 2635.204(a) is a gift to the employee rather than to his employing agency.

Example 5: A Navy contracting officer is participating in a procurement for environmental cleanup services at a Navy installation that has recently been closed. She is presently involved in negotiation⁶ with three competing contractors, one of whom has offered her a

fancy ballpoint pen embossed with its corporate logo. Even though the pen has a market value of \$18 and could be accepted under the \$20 de minimis exception at S 2635.204(a), the contracting officer cannot accept the competing contractor's gift. Under the procurement integrity provisions at 41 U.S.C. 423, she is a "procurement official" for that contract and, except as specifically permitted by the regulations implementing that statute, she is prohibited prior to award from accepting a gift from a competing contractor for that contract. The Federal Acquisition Regulation at 48 CFR 3.104 contains an exception for gifts with a market value of \$10 or less.

(b) Gifts based on a personal relationship. An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

Example 1: An employee of the Federal Deposit Insurance Corporation has been dating a secretary employed by a member bank. For Secretary's Week, the bank has given each secretary 2 tickets to an off-Broadway musical review and has urged each to invite a family member or friend to share the evening of entertainment. Under the circumstances, the FDIC employee may accept his girlfriend's invitation to the theater. Even though the tickets were initially purchased by the member bank, they were given without reservation to the secretary to use as she wished, and her invitation to the employee was motivated by their personal friendship.

Example 2: Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission to join them in a golf tournament at a private club at the firm's expense. The entry fee is \$500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm's dealings with the ETC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners' gift.

(c) Discounts and similar benefits. In addition to those opportunities and benefits excluded from the definition of a gift by S 2635.203(b)(4), an employee may accept:

(1) Reduced membership or other fees for participation in organization activities offered to all Government employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications; and

(2) Opportunities and benefits, including favorable rates and commercial discounts not precluded by paragraph (c)(3) of this section:

(i) Offered to members of a group or class in which membership is unrelated to Government employment;

(ii) Offered to members of an organization, such as an employees association or agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size; or

(iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay; provided, however, that

(3) An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds.

Example 1: An employee of the Consumer Product Safety Commission may accept a discount of \$50 on a microwave oven offered by the manufacturer to all members of the CPSC employees' association. Even though the CPSC is currently conducting studies on the safety of microwave ovens, the \$50 discount is a standard offer that the manufacturer has made broadly available through a number of similar organizations to large segments of the public.

Example 2: An Assistant Secretary may not accept a local country club's offer of membership to all members of Department Secretariats which includes a waiver of its \$5,000 membership initiation fee. Even though the

country club is not a prohibited source, the offer discriminates in favor of higher ranking officials.

Example 3: The administrative officer for a district office of the Immigration and Naturalization Service has signed an INS order to purchase 50 boxes of photocopy paper from a supplier whose literature advertises that it will give a free briefcase to anyone who purchases 50 or more boxes. Because the paper was purchased with INS funds, the administrative officer cannot keep the briefcase which, if claimed and received, is Government property.

(d) Awards and honorary degrees. (1) An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of \$200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of \$200 and awards of cash or investment interests offered by such persons as award or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition:

(i) Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and

(ii) Under which selection of award recipients is made pursuant to written standards.

(2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

(3) An employee who may accept an award or honorary degree pursuant to paragraph (d)(1) or (2) of this section may also accept meals and entertainment given

to him and to members of his family at the event at which the presentation takes place;

Example 1: Based on a determination by an agency ethics official that the prize meets the criteria set forth in S 2635.204 (d)(1), an employee of the National Institutes of Health may accept the Nobel Prize for Medicine, including the cash award which accompanies the prize, even though the prize was conferred on the basis of laboratory work performed at NIH.

Example 2: Prestigious University wishes to give an honorary degree to the Secretary of Labor. The Secretary may accept the honorary degree only if an agency ethics official determines in writing that the timing of the award of the degree would not cause a reasonable person to question the Secretary's impartiality in a matter affecting the university.

Example 3: An ambassador selected by a nonprofit organization as recipient of its annual award for distinguished service in the interest of world peace may, together with his wife, and children, attend the awards ceremony dinner and accept a crystal bowl worth \$200 presented during the ceremony. However, where the organization has also offered airline tickets for the ambassador and his family to travel to the city where the awards ceremony is to be held, the aggregate value of the tickets and the crystal bowl exceeds \$200 and he may accept only upon a written determination by the agency ethics official that the award is made as part of an established program of recognition.'

(e) Gifts based on outside business or employment relationships. An employee may accept meals, lodgings, transportation and other benefits:

(1) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;

Example 1: A Department of Agriculture employee whose husband is a computer programmer employed by an Agriculture Department contractor may attend the company's annual retreat for all of its employees and their families held at a resort facility. However, under S 2635.502, the employee may be disqualified from performing official duties affecting her husband's

employer.

Example 2: Where the spouses of other clerical personnel have not been invited, an employee of the Defense Contract Audit Agency whose wife is a clerical worker at a defense contractor may not attend the contractor's annual retreat in Hawaii for corporate officers and members of the board of directors, even though his wife received a special invitation for herself and her spouse.

(2) Resulting from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

Example 1: The members of an Army Corps of Engineers environmental advisory committee that meets 6 times per year are special Government employees. A member who has a consulting business may accept an invitation to a \$50 dinner from her corporate client, an Army construction contractor, unless, for example, the invitation was extended in order to discuss the activities of the committee.

(3) Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment.

Example 1: An employee of the Federal Communications Commission with responsibility for drafting regulations affecting all cable television companies wishes to apply for a job opening with a cable television holding company. Once she has properly disqualified herself from further work on the regulations as required by subpart F of this part, she may enter into employment discussions with the company and may accept the company's offer to pay for her airfare, hotel and meals in connection with an interview trip.

(4) For purposes of paragraphs (e)(1) through (3) of this section, employment shall have the meaning set forth in S 2635.603(a).

(f) Gift⁶ from a political organization. An employee who is exempt under 5 U.S.C. 7324(d) from the Hatch Act prohibitions against active participation in political management or political campaigns may accept meals, lodgings, transportation and other benefits, including free attendance at ,events, when provided, in-connection with such active participation,. by-a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an exempt employee to a political event may accept meals, free attendance and entertainment provided at the event by such a political organization.

Example 1: The Secretary of the Department of Health and Human Services is exempt from the noted Hatch Act restrictions. He may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.

(g) Widely attended gatherings and other events-(1) Speaking and similar engagements. When an employee is assigned to participate as a speaker or panel participant or otherwise to present information on behalf of the agency at a conference or other event, his acceptance of an offer of free attendance at the event on the day of his presentation is permissible when provided by the sponsor of the event. The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.

(2) Widely attended gatherings. When there has been a determination that his attendance is in the interest of the agency because it will further agency program⁶ or operations, an employee may accept a sponsor's unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties. A gathering is widely attended if, for example, it is open to *members* from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise

without charge to the employee's leave account.

(3) Determination of agency interest. The determination of agency interest required by paragraph (g)(2) of this section shall be made orally or in writing by the agency designee.

(i) If the sponsor is a person who has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or an association or organization the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the sponsor of the event, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the monetary value of the gift of free attendance.

(ii) A blanket determination of agency interest may be issued to cover all or any category of invitees other than those as to whom a finding is required by paragraph (g)(3)(i) of this section. Where a finding under paragraph (g)(3)(i) of this section is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees whose duties similarly affect the interests of the sponsor or its members.

(4) Free attendance. For purposes of paragraphs (g) (1) and (2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees.

Note: There are statutory authorities implemented other

than by part 2635 under which an agency or an employee may be able to accept free attendance or other items not included in the definition of free attendance, such as travel expenses.

(5) Cost provided by sponsor of event. The cost of the employee's attendance will not be considered to be provided by the sponsor where a person other than the sponsor designates the employee to be invited and bear the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(6) Accompanying spouse. When others in attendance will generally be accompanied by spouses, the agency designee may authorize an employee to accept a sponsor's invitation to an accompanying spouse to participate in all **or** a portion of the event at which the employee's free attendance is permitted under paragraph (g)(1) or (2) of this section. The authorization required by this paragraph may be provided orally or in writing.

Example 1: An aerospace industry association that is a prohibited source sponsor a seminar for which it charges a fee of \$100. An Air Force contractor pays \$500 to the association so that the association can extend free invitation to five Air Force officials designated by the contractor. The Air Force officials may not accept the **gift** of free attendance. Because the contractor **specified** the invitees and bore the cost of their attendance, the gift of free attendance is considered to be provided by the company and not by the sponsoring association. Had the contractor paid \$500 to the association in order that it might invite any five Federal employees, an Air Force official to whom the sponsoring association extended one of the **five** invitations could attend if his participation were determined to be in the interest of the agency.

Example 2: An employee of the Department of the **Treasury** authorized to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsors waiver of the conference fee. Under the separate authority of S 2635.204 (a), he may accept a token of appreciation for

his speech having a market value of \$20 or less.

Example 3: An Assistant U.S. Attorney is invited to attend a luncheon meeting of a local bar association to hear a distinguished judge lecture on cross-examining expert witnesses. Although members of the bar association are assessed a \$15 fee for the meeting, the Assistant U.S. Attorney may accept the bar association's offer to attend for free, even without a determination of agency interest. The gift can be accepted under the \$20 de minimis exception at S 2635.204 (a).

Example 4: An employee of the Department of the Interior authorized to speak on the first day of a four-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference. If the conference is widely attended, he may be authorized, based on a determination that his attendance is in the agency's interest, to accept the sponsor's offer to waive the attendance fee for the remainder of the conference.

(h) Social invitations from persons other than prohibited sources. An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where:

(1) The invitation is from a person who is not a prohibited source; and

(2) No fee is charged to any person in attendance.

Example 1: Along with several other Government officials and a number of individuals from the private sector, the Administrator of the Environmental Protection Agency has been invited to the premier showing of a new adventure movie about industrial espionage. The producer is paying all costs of the showing. The Administrator may accept the invitation since the producer is not a prohibited source and no attendance fee is being charged to anyone who has been invited.

Example 2: An employee of the White House Press Office has been invited to a cocktail party given by a noted Washington hostess who is not a prohibited source. The employee may attend even though he has only recently

been introduced to the hostess and suspects that he may have been invited because of his official position.

(i) Meals, refreshments and entertainment in foreign areas. An employee assigned to duty in, or on official travel to, a foreign area as defined in 41 CFR 301-7.3(c) may accept food, refreshments or entertainment in the course of a breakfast, luncheon, dinner or other meeting or event provided:

(1) The market value *in the* foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State's Maximum Per Diem Allowances for Foreign Areas, Per Diem Supplement Section 925 to the Standardized Regulations (GC,FA) available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402;

(2) There is participation in the meeting or event by non-U.S. citizens or by representatives of *foreign* governments or other foreign entities;

(3) Attendance at the meeting or event is part of the employees official duties to obtain information, disseminate information, promote the export of U.S. goods and services, represent the United States or otherwise further programs or operations of the agency or the U.S. mission in the foreign area; and

(4) The *gift* of meals, refreshments or entertainment is from a person *other* than a foreign government as defined in 5 U.S.C. 7342(a)(2).

Example 1: A number of local businessmen in a developing country are anxious for a U.S. company to locate a manufacturing facility in their province. An official of the Overseas Private Investment Corporation may accompany the visiting vice president of the U.S. company to a dinner meeting hosted by the businessmen at a province restaurant where the market value of the food and refreshments does not exceed the per diem rate for that *country*.

(j) Gifts to the President or Vice President. Because of consideration⁶ relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on

his own behalf or on behalf of any family member, provided that such acceptance does not violate 5 2635.202(c) (1) OR (2), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.

(k) Gifts authorized by supplemental agency regulation. An employee may accept any gift the acceptance of which is specifically authorized by a supplemental agency regulation.

(1) Gifts accepted under specific statutory authority. The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item, receipt of which is specifically authorized by statute. Gifts which may be received by an employee under the authority of specific statutes include, but are not limited to:

(1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefor incident to training or meetings when accepted by the employee under the authority of 5 U.S.C. 4111 from an organization with tax-exempt status under 26 U.S.C. 501(c)(3) or from a person to whom the prohibitions in 18 U.S.C. 209 do not apply. The employee's acceptance must be approved by the agency in accordance with SS 410.701 through 410.706 of this title; or

Note: 26 U.S.C. 501(c)(3) is authority for tax-exempt treatment **of** a limited class of nonprofit organizations, including those organized and operated for charitable, religious or educational purposes. Many nonprofit organizations are not exempt from taxation under this section.

(2) Gifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations or procedure6 implementing that Act.

(57 FR 35041, Aug. 7, 1992; 57 FR 48557, Oct. 27, 1992)

S 263S.tOS Proper disposition of prohibited gifts.

(a) An employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

(1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See S 2635.203(c).

Example 1: To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth \$200 given at the conclusion of his speech on Federal lands policy. The employee must either return the barometer or promptly reimburse the sponsor \$200.

(2) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.

Example 1: With approval by the recipient's supervisor, a floral arrangement sent by a disability claimant to a helpful employee of the Social Security Administration may be placed in the office's reception area.

(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

Example 1: A Department of Defense employee wishes to attend a charitable event to which he has been offered a \$300 ticket by a prohibited source. Although his attendance is not in the interest of the agency under S 2635.204(g), he may attend if he reimburses the donor the \$300 face value of the ticket.

(4) Dispose of gifts from foreign governments or international organizations in accordance with 41 CFR part 101-49, and dispose of materials received in conjunction with official travel in accordance with 41 CFR 101-25.103.

(b) An agency may authorize disposition or return of

gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on his own initiative.

subpart C-Gifts Between employees

\$ 2635.301 Overview.

This subpart contains standards that prohibit an employee from giving, donating to, or soliciting contributions for, a gift to an official superior and from accepting a gift from an employee receiving less pay than himself, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

S 2635.302 general standards.

(a) Gifts to superiors. Except as provided in this subpart, an employee may not:

(1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or

(b) Gifts from employees receiving less pay. Except as provided in this subpart, an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:

(1) The two employees are not in a subordinate-official superior relationship; and

(2) There is a personal relationship between the two

employees that would justify the gift.

(c) Limitation on use of exceptions. Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

§ 2635.303 Definitions.

For purposes of this subpart, the following definition shall apply:

(a) Gift has the meaning set forth in § 2635.203(b). For purposes of that definition an employee will be deemed to have paid market value for any benefit received as a result of his participation in any car pool or other such mutual arrangement involving another employee or other employees if he bears his fair proportion of the expense or effort involved.

(b) Indirectly, for purposes of § 2635.302(b), has the meaning set forth in § 2635.203(f). For purposes of § 2635.302(a), it includes a gift:

(1) Given with the employee's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or

(2) Given by a person other than the employee under circumstances where the employee has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.

(c) Subject to paragraph (a) of this section, market value has the meaning set forth in § 2635.203(c).

(d) Official superior means any other employee, other than the President and the Vice President, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. For purposes of this subpart, an employee is considered to be the subordinate of any of his official superiors.

(e) Solicit means to request contributions by personal communication or by general announcement.

(f) Voluntary contribution means, a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contributing employee, except that where an amount for a gift is included in the cost for a luncheon, reception or similar event, an employee who freely chooses to pay a proportionate share of the total cost in order to attend will be deemed to have made a voluntary contribution. Except in the case of contributions for a gift included in the cost of a luncheon, reception or similar event, a statement that an employee may choose to contribute less or not at all shall accompany any recommendation of an amount to be contributed for a gift to an official superior.

Example 1: A supervisory employee of the Agency for International Development has just been reassigned from Washington, DC to Kabul, Afghanistan. As a farewell party, 12 of her subordinates have decided to take her out to lunch at the Khyber Repast. It is understood that each will pay for his own meal and that the cost of the supervisor's lunch will be divided equally among the twelve. Even though the amount they will contribute is not determined until the supervisor orders lunch, the contribution made by those who choose to participate in the farewell lunch is voluntary.

S 2635.304 - exceptions.

The prohibitions set forth in S 2635.302(a) and (b) do not apply to a gift given or accepted under the circumstances described in paragraph (a) or (b) of this section. A contribution or the solicitation of a contribution that would otherwise violate the prohibition set forth in S 2635.302(a) and (b) may only be made in accordance with paragraph (c) of this section.

(a) General exceptions. On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) Items, other than cash, with an aggregate market value of \$10 or less per occasion;

(2) Items such as food and refreshments to be shared in the office among several employees;

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(3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;

(4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions; and

(5) Leave transferred under subpart I of part 630 of this title to an employee who is not an immediate supervisor, unless obtained in violation of S 630.912 of this title.

Example 1: Upon returning to work following a vacation at the beach, a. claims examiner with the Department of Veterans Affairs may give his supervisor, and his supervisor may accept, a bag of saltwater taffy purchased on the boardwalk for \$8.

Example 2: An employee of the Federal Deposit Insurance Corporation whose bank examination responsibilities require frequent travel may not bring her supervisor, and her supervisor may not accept, souvenir coffee mugs from each of the cities she visits in the course of performing her duties, even though each of the mugs Costs less than \$5. Gifts given on this basis are not occasional.

Example 3: The Secretary of Labor has invited the agency's General Counsel to a dinner party at his home. The General Counsel may bring a \$15 bottle of wine to the dinner party and the Secretary may accept this customary hostess gift from his subordinate, even though its cost is in excess of \$10.

Example 4: For Christmas, a Secretary may give his supervisor, and the supervisor may accept, a poinsettia plant purchased for \$10 or less. The secretary may also invite his supervisor to a Christmas party in his home and the supervisor may attend.

(b) Special, infrequent occasions. A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) In recognition of infrequently occurring occasion of personal significance such as marriage, illness, or the birth or adoption of a child; or

(2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

Example 1: The administrative assistant to the personnel director of the Tennessee Valley Authority may send a \$30 floral arrangement to the personnel director who is in the hospital recovering from surgery. The personnel director may accept the gift.

Example 2: A chemist employed by the Food and Drug Administration has been invited to the wedding of the lab director who is his official superior. He may give the lab director and his bride, and they may accept, a place setting in the couple's selected china pattern purchased for \$70.

Example 3: Upon the occasion of the supervisor's retirement from Federal service, an employee of the Fish and Wildlife Service may give her supervisor a book of wildlife photographs which she purchased for \$19. The retiring supervisor may accept the book.

(c) Voluntary contributions. An employee may solicit Voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior:

(1) on a special, infrequent occasion as described in paragraph (b) of this section; or

(2) On an occasional basis, for items such as food and refreshments to be shared in the office among several employees.

An employee may accept such gifts to which a subordinate or other employee receiving less pay than himself has contributed.

Example 1: To mark the occasion of his retirement, members of the immediate staff of the Under Secretary of the Army would like to give him a party and provide him with a gift certificate. They may distribute an announcement of the party and include a nominal amount for a retirement gift in the fee for the party.

Example 2: The General Counsel of the National

Endowment for the Arts may not collect contributions for a Christmas gift for the Chairman. Christmas occurs annually and is not an occasion of personal significance.

'Example-3: Subordinates may not take up a collection for a gift to an official superior on the occasion of the superior's swearing in or promotion to a higher grade position within the supervisory chain of that organization. These are not events that mark the termination of the subordinate-official superior relationship, nor are they event⁶ of personal significance within the meaning of S 2635.304 (b). However, subordinates may take up a collection and employee⁶ may contribute \$3 each to buy refreshments to be consumed by everyone in the immediate office to mark either such occasion.

Example 4: Subordinates may each contribute a nominal amount to a fund to give a gift to an official superior upon the occasion of that superior's transfer or promotion to a position outside the organization.

Example 5: An Assistant Secretary at the Department of the Interior is getting married. His secretary has decided that a microwave oven would be a nice gift from his staff and has informed each of the Assistant Secretary's subordinates that they should contribute \$5 for the gift. Her method of collection is improper. Although She may recommend a \$5 contribution, the recommendation must be coupled with a statement that the employee whose contribution is solicited is free to contribute less or nothing at all.

subpart P-Conflicting Financial Interests

s 2635.401 Overview.

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by S 2635.403. Notwithstanding that hi⁶ acquisition or holding of a particular interest is

proper, an employee is prohibited in accordance with S 2635.402 of this subpart from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

5 2635.402 Disqualifying financial interests.

(a) Statutory prohibition. An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

Note: Standards applicable when seeking non-Federal employment are contained in subpart F of this part and, if followed, will ensure that an employee does not violate 18 U.S.C. 208(a) or this section when he is negotiating for or has an arrangement concerning future employment. In all other cases where the employee's participation would violate 18 U.S.C. 208(a), an employee shall disqualify himself from participation in the matter in accordance with paragraph (c) of this section or obtain a waiver, as described in paragraph (d) of this section.

(b) Definitions. For purposes of this section, the following definitions shall apply:

(1) Direct and predictable effect. (I) A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

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(ii) A particular matter will have a predictable effect if there is a real, as opposed to a speculative, possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

Note: If a particular matter involves a specific party or parties, generally the matter will at most only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party, such as the employee's interest by virtue of owning stock. There may, however, be some situations in which, under the above Standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter may also have a direct and predictable effect on an employee's financial interests through ownership of stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on an employee's financial interest in another company listed as a subcontractor in the proposal of one of the competing offerors.

Example 1: An employee of the National Library of Medicine at the National Institutes of Health has just been asked to serve on the technical evaluation panel to review proposals for a new library computer search system. DEF Computer Corporation, a closely held company in which he and his wife own a majority of the stock, has submitted a proposal. Because award of the systems contract to DEF or to any other offeror will have a direct and predictable effect on both his and his wife's financial interests, the employee cannot participate on the technical evaluation team unless his disqualification has been waived.

Example 2: Upon assignment to the technical evaluation panel, the employee in the preceding example finds that DEF Computer Corporation has not submitted a proposal. Rather, LMN Corp., with which DEF competes for private sector business, is one of the six offerors. The employee is not disqualified from serving on the technical evaluation panel. Any effect on the employee's financial interests as a result of the agency's decision to award or not award the systems

contract to &MN would be at most indirect and speculative.

(2) Imputed interests. For purposes of 18 U.S.C. 208(a) and this subpart, the financial interests of the following persons will serve to disqualify an employee to the same extent as if they were the employee's own interests:

(i) The employee's spouse;

(ii) The employee's minor child;

(iii) The employee's general partner;

(iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee; and

(v) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment. (Employees who are seeking other employment should refer to and comply with the standards in subpart F of this part).

Example 1: An employee of the Department of Education serves without compensation on the board of directors of Kinder World, Inc., a nonprofit corporation that engages in good works. Even though her personal financial interests will not be affected, the employee must disqualify herself from participating in the review of a grant application submitted by Kinder World. Award or denial of the grant will affect the financial interests of Kinder World and its financial interests are imputed to her as a member of its board of directors.

Example 2: The spouse of an employee of the Food and Drug Administration has obtained a position with a well established biomedical research company. The company has developed an artificial limb for which it is seeking FDA approval and the employee would ordinarily be asked to participate in the FDA's review and approval process. The spouse is a salaried employee of the company and has no direct ownership interest in the company. Nor does she have an indirect ownership interest, as would be the case, for example, if she were participating in a pension plan that held stock in the company. Her position with the company is such that

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the granting or withholding of FDA approval will not have a direct and predictable effect on her salary or on her continued employment with the company. Since the FDA approval process will not affect his spouse's financial interests, the employee is not disqualified under S 2635.402 from participating in that process. Nevertheless, the financial interests of the spouse's employer may be disqualifying under the impartiality principle, as implemented at s 2635.502.

(3) Particular matter. The term particular matter encompasses only matters that involve deliberation, decision, or action that is focused upon the interest⁶ of specific persons, or a discrete and identifiable class of persons. Such a matter is covered by this subpart even if it does not involve formal parties and may include governmental action such as legislation or policy-making that is narrowly focused on the interests of such a discrete and identifiable class of persons. The term particular matter, however, does not extend to the Consideration or adoption of broad policy options that are directed to the interests of a large and diverse 'group of persons. The particular matters covered by this subpart include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

Example 1: The Internal Revenue Service's amendment of its regulation⁶ to change the manner in which depreciation is calculated is not a particular matter, nor is the Social Security Administration's consideration of changes to its⁶ appeal procedures for disability claimants.

Example 2: Consideration by the Interstate Commerce Commission of regulations establishing safety standards for trucks on interstate highways involves a particular matter.

(4) Personal and substantial. To participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge,

perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

(c) Disqualification. Unless the employee is authorized to participate in the particular matter by virtue of a waiver described in paragraph (d) of this section or because the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interest⁶ are imputed to him ha⁶ a financial interest, if the particular matter will have a direct and . predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

(1) Notification. An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to Coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified;

(2) Documentation. An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: An Assistant Secretary of the Department of the Interior owns recreational property that borders on land which is being considered for annexation to a national park. Annexation would directly and predictably increase the value of her vacation property and, thus, she is disqualified from participating in any way in the Department's deliberations or decisions regarding the annexation. Because she is responsible for determining which matters she will work on, she may accomplish her disqualification merely by ensuring that she does not participate in the matter. Because of the level of her position, however, the Assistant Secretary might be wise to establish a record that she has acted properly by providing a written disqualification statement to an official superior and by providing written notification of the disqualification to subordinates to ensure that they do not raise or discuss with her any issues related to the annexation.

(d) Waiver of disqualification. An employee who would otherwise be disqualified by 18 U.S.C. 208(a) may be permitted to participate in a particular matter where the otherwise disqualifying financial interest is the subject of a regulatory or individual waiver described in this paragraph, or results from certain Indian birthrights as described in 18 U.S.C. 208(b)(4).

(1) Regulatory waivers. Under 18 U.S.C. 208(b)(2), regulatory waivers of general applicability may be issued by the Office of Government Ethics based on its determination that particular interests are too remote or too inconsequential to affect the integrity of the services of the employees to whom the waivers apply. Pending issuance of superseding regulatory waivers under this authority, agency regulatory waivers issued under 18 U.S.C. 208(b)(2) a.8 in effect prior to November 30, 1989 continue to apply.

(2) Individual waivers. An individual waiver enabling the employee to participate in one or more particular matters may be issued under 18 U.S.C. 208(b)(1) if, in advance of the employee's participation:

(i) The employee:

(A) Advises the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated) about the nature and circumstances

of the particular matter or matters; and

(8) Make full disclosure to such official of the nature and extent of the disqualifying financial interest; and

(ii) Such official determines, in writing, that the employee's financial interest in the particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee.

(3) Federal advisory committee member waivers. An individual waiver may be issued under 18 U.S.C. 208(b)(3) to a special Government employee **serving on, or** under consideration for appointment to, an advisory committee within the meaning of the Federal Advisory Committee Act if the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated):

(i) Reviews the financial disclosure report filed by the special Government employee pursuant to the Ethics in Government Act of 1978; and

(ii) Certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the otherwise disqualifying financial interest.

(4) Consultation and notification regarding waivers. When practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in paragraph (d)(2) or (3) of this section. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.

(e) Divestiture of a disqualifying financial interest. Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, 18 U.S.C. 208(a) and paragraph (c) of this section will no longer prohibit the employee's participation in the matter.

(1) Voluntary divestiture. An employee who would otherwise be disqualified from participation in a particular matter may Voluntarily sell or otherwise

divest himself of the interest that causes the disqualification.

(2) Directed divestiture. An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency Supplemental regulation issued in accordance with S 2635.403(a), or if the agency determines, in accordance with S 2635.403(b) that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.

(3) Eligibility for special tax treatment. An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.

(f) Official duties that give rise to potential Conflicts. Where an employee's Official duties Create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential SO that conflicting assignments can be avoided, consistent with the agency's needs.